

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA

3 BARBARA ROBERTSHAW,)
4)
5 Plaintiff,) 2:11-cv-07353-TON
6)
7 vs.) Philadelphia, PA
8) April 26, 2013
9 GARY F. PUDLES, et al.,)
10)
11 Defendants.)

12 TRANSCRIPT OF BENCH TRIAL
13 BEFORE THE HONORABLE THOMAS N. O'NEILL, JR.
14 UNITED STATES DISTRICT JUDGE
15

16 APPEARANCES:

17 For the Plaintiff: F. EMMETT FITZPATRICK, III, ESQ.
18 WALTER FLAMM, ESQ.
19 FLAMM BAROFF & BACINE
20 794 Penllyn Pike
21 Suite 100
22 Blue Bell, PA 19422
23
24 For the Defendant MAURICE R. MITTS, ESQ.
25 Gary Pudles and MITTS LAW LLC
AnswerNet, Inc.: Two Logan Square
12th Floor
Philadelphia, PA 19103

Proceedings recorded by electronic sound recording.

Veritext National Court Reporting Company
Mid-Atlantic Region
1801 Market Street - Suite 1800
Philadelphia, PA 19103
888-777-6690

1

I N D E X

VOIR

2

WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

DIRE

For the Plaintiff:

3

Gary Pudles

3

32,41

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John Mitchell

55

82,86

4

William Robertshaw

107

5

EXHIBITS

DESCRIPTION

ID.

EVID.

6

For the Plaintiff:

7

O-2

Request for production of
documents

51

8

For Defendant Pudle:

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D397

Bills for legal services
from Burns and Kasmen PC

105

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1 THE COURT: Sorry to have delayed you a few
minutes.

2 DIRECT EXAMINATION RESUMED

3 BY MR. FLAMM:

4 Q. Mr. Pudles, I'd like to just for a couple of minutes here
5 talk about how AnswerNet was run.

6 And if I were to characterize it that AnswerNet was run by
7 you, would that be an incorrect statement?

8 A. It would be an incomplete statement.

9 Q. Okay. Would you like to say AnswerNet was run primarily
10 by you? You made -- you were the CEO and were the prime
11 driver of AnswerNet; is that fair to say?

12 A. AnswerNet Inc., I was the CEO and leader; but -- and
13 Signius, which is AnswerNet's wholly owned subsidiary since
14 2007; Bill was the CEO, I wasn't.

15 But to answer the question, Bill and I ran all of the
16 companies together. We talked regularly, I shared information
17 with him freely and regularly. So while we each deferred to
18 each other in certain operational decisions, when it came to
19 significant decisions, Bill and I made those decisions
20 jointly; and Barbara would be kept informed mostly by her
21 father and would give her input when she had an opinion that
22 she wanted to share.

23 Q. So, well, isn't it correct that Barbara had no role in
24 the operation of AnswerNet?

25 A. After the 2007 mergers to today, Barbara receded out of

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1 operations; but from time to time I would -- she didn't have a
2 regular role, no, she did not.

3 Q. And Bill was -- his role was construction and issues in
4 day-to-day management; isn't that right?

5 A. No, that's not really correct. Well, Bill Robertshaw and
6 I talked about all forms of business and even -- at some point
7 after -- in 2011 I actually put Bill Robertshaw on the
8 distribution list for all of the significant operational
9 communications with the executive management team; and Bill
10 had the ability to communicate and participate in any part of
11 that conversation or work; and sometimes did.

12 Q. Can I direct your attention, please, to Plaintiff's
13 Exhibit K2.

14 A. Plaintiff's -- yes, sir.

15 Q. Are you there?

16 A. Yes, sir.

17 Q. Okay. If you look about two-thirds down the page is
18 AnswerNet. Do you see that?

19 A. I do.

20 Q. First of all, this is an e-mail from you; is it not? To
21 the Robertshaws?

22 A. It is.

23 Q. Could you read the paragraph starting with "AnswerNet"?

24 A. "AnswerNet. Nothing had changed in AnswerNet or Cerida.
25 Now with Waterside out, I will continue to be the CEO of

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1 AnswerNet and Cerida; and Bill will continue to help manage
2 the construction facility issues; Barbara and Gary will
3 continue to get equal pay but Barbara will not have an
4 operating role in either of the companies."

5 Q. Is that an accurate characterization of the operation of
6 AnswerNet as of the date of that e-mail?

7 A. It was a characterization of my -- of my running the
8 business day to day; but, again, you asked about AnswerNet.
9 Signius Communications -- Signius is --

10 Q. You're right, I asked about AnswerNet.

11 A. Bill was continuing to be the CEO; and at that point
12 Signius was a wholly-owned subsidiary of AnswerNet, so -- I
13 mean, what was our agreement is there but what happened in
14 reality is, as I said, Bill and I ran the company together, we
15 made -- you know, operational decisions, day-to-day, I made
16 many of them.

17 Q. Can you repeat -- the question was --

18 THE COURT: Excuse me. I'm not sure the witness had
19 finished his answer.

20 MR. FLAMM: I was going to object to the witness not
21 being responsive to the question, so I was going to re-ask the
22 question.

23 THE COURT: Well, let him finish his answer and then
24 we'll determine whether it was responsive.

25 THE WITNESS: So, as I said, AnswerNet Inc. had a

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1 wholly-owned subsidiary which Bill Robertshaw was respon --
2 was the CEO of. And in reality, despite what's -- you know,
3 what's said on the paper is generally true; but in reality
4 Bill was my friend and my mentor and my guide; and together we
5 made decisions; we had agreements that we were running the
6 business together; we talked about it often. And back then we
7 were -- my office was right next door to his; so we were
8 collaborating on most matters. We'd go out to lunch every day
9 and we'd talk about -- as Barbara testified, we'd talk about
10 everything about the business. We'd talk about our -- our --
11 you know -- operational issues, we would talk -- and Bill and
12 I would -- I'd make the decisions, I was the president of
13 AnswerNet Inc. -- or the C -- and the CEO, I was the president
14 of Signius, Bill was the CEO; so we had -- to other people, we
15 had our roles; but together we were running all of these
16 businesses from the time Barbara stepped out of operations
17 until -- until 2007, when the Robertshaws sold --

18 Q. Would you say --

19 A. -- sold Startel.

20 Q. Are you done?

21 A. I am now. Thank you.

22 Q. Would you say Bill trusted you?

23 A. I would have said that before I saw what I saw in the
24 discovery. So, yes, I thought -- I mean, in 2010 I invited
25 Bill -- my fiancée is a doctor. We invited Bill to stay at

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1 our home because we were concerned about him and wanted to
2 make sure he had care. So I would say that Bill and I
3 appeared to have a very trusting and caring relationship.
4 Now, through this case, I've seen that he's not always been
5 completely truthful with me; but, you know, I -- at the time
6 this was happening I thought Bill -- I thought Bill and I were
7 extremely close.

8 Q. AnswerNet had a separate accounting department from the
9 Robertshaw-owned companies that you had nothing to do with;
10 isn't that right?

11 A. It did.

12 Q. And the accounting -- that accounting department reported
13 to you, did it not?

14 A. Well, no, actually, AnswerNet had two accounting
15 departments. One was AnswerNet Inc. and Cerida and one group
16 of companies, so -- and the other was Signius, which was the
17 biggest part of our company. And that accounting department
18 actually reported -- was run by a woman by the name of
19 Michelle Ju, who now -- who now works for Barbara as her CFO,
20 and she -- Michelle Ju reported up to Bill Robertshaw, and
21 still does.

22 Q. When the -- do you recall testifying about the
23 transaction for the purchase of the three-percent warrants
24 where you said that we reclassified the payment by Cerida and
25 reclass -- that was listed as a distribution. Do you recall

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1 that?

2 A. I do.

3 Q. Okay. Was that done at your direction?

4 A. I don't know whose direction it was done at, but I know
5 that --

6 Q. Was it done at Bill Robertshaw's direction?

7 A. I'm --

8 MR. MITTS: Your Honor, he wasn't finished answering.

9 THE COURT: Well -- I think both the witness and the
10 questioner should understand that only one person can speak at
11 a time, otherwise the record is going to be very garbled.
12 Let's start all over again. Put the question, please,
13 counsel, and then the witness will answer.

14 BY MR. FLAMM:

15 Q. Did you direct the accounting department to reclassify
16 those entries?

17 A. Actually, let me -- let me be more clear. I did not
18 direct the accounting department. The audit preparation and
19 the audit documentation was prepared by Michelle Ju, not by
20 me. I had nothing to do with the audit or any journal entries
21 or reclassifications of transaction.

22 Q. So is it your testimony that the decision to
23 recharacterize, for instance, Barbara Robertshaw's 65,000-
24 dollar payment, from a payment to a loan, was not your
25 decision?

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1 A. I don't think -- no, in fact, I'm sure that we decided
2 that the transaction was going to Cerida. The actual how that
3 was going to be handled on the books and records would have
4 been handled by John Mitchell and Michelle Ju, and not me,
5 absolutely not me. Yeah.

6 Q. But it wasn't done by Bill or Barbara Robertshaw.

7 A. To my knowledge, it would have -- it would have been John
8 Mitchell and Michelle Ju would have done that.
9 You're talking about the actual -- the actual entries and
10 things. That would have been done by Michelle Ju and John
11 Mitchell.

12 Q. And neither Bill nor Barbara Robertshaw would have been
13 consulted in advance of the reclassification of those entries
14 for accounting purposes, isn't that right?

15 A. Again, I don't know who John and Michelle talked to. I
16 certainly don't recall that. I do know that it wasn't
17 shown -- that the distribution wasn't shown on any K1. And it
18 was -- so I know that Barbara Robertshaw did not -- you know,
19 taxes are not paid on distributions; and it wasn't shown on a
20 K1; so Barbara would have certainly known that she didn't have
21 a distribution for this amount.

22 Q. How about the accounting classification of how your
23 payout was treated? Who -- and by that I mean the 980,000
24 dollars, the money that was paid to you in connection with the
25 divorce --

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1 A. So what --

2 Q. -- distribution. Who --

3 A. I'm sorry. I apologize. Go ahead.

4 THE COURT: He hasn't finished his question.

5 THE WITNESS: I apologize.

6 BY MR. FLAMM:

7 Q. My question is, who made the determination how to
8 reclassify all of those transactions, or book all those
9 transactions?

10 A. It was -- the process was started by John Mitchell and
11 Cindy Ravitch, pursuant to an e-mail, which is one of your
12 exhibits, if -- and I can point it out if you want me to do
13 so -- prior to the distribution. And then there were a couple
14 of -- there were a couple of things that I didn't agree with,
15 so they were then, I believe, fixed by Joe Koletty or Mary
16 Cade (ph.) in the accounting department; but the actual plan,
17 et cetera, was actually done by John -- by Cindy Ravitch, I
18 think. There's -- there's an e-mail --

19 Q. The e-mail is from you?

20 A. The e-mail is from me to Cindy and John.

21 Q. Directing them to do what?

22 A. If I could, let me pull up the e-mail. I know it's in
23 your --

24 MR. MITTS: Your Honor, to save time, it's Exhibit
25 N15 in the Plaintiff's binder.

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1 THE WITNESS: Thank you.

2 THE COURT: Thank you.

3 THE WITNESS: So, on August 18th I sent Exhibit N15
4 to Cindy and John. In it -- in it I lay out the goals, I
5 identify the loans. I really lay out what I believe is the
6 right path for it. And what I write at the end, which I think
7 is most important, "John, I need a plan for all of this, and I
8 would like to get it done prior to making this payment so I
9 can make sure that Cindy can put these entries into the final
10 balance sheets being prepared under her leadership." She
11 was -- Cindy was leaving at the time. "We need to make quick
12 decisions here and get them implemented in this financing
13 cycle." "In this finance cycle."

14 So this was the actual entries and things like that
15 and how all that was done, I laid out a plan in Exhibit 15;
16 and they actually did the work and executed my request.

17 BY MR. FLAMM:

18 Q. And that was -- that e-mail was your writing and your
19 ideas, correct?

20 A. Correct. In August, prior to the distribution.

21 Q. Did you give similar inquiry, direction, suggestion to
22 the accounting department with respect to the reclassification
23 of the payments of the 376,000 dollars?

24 A. I'm not sure I understand what you're saying.

25 Q. Okay.

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1 MR. FLAMM: I'll withdraw the question.

2 Q. If you'd turn to Exhibit K5, please.

3 A. Yes, sir.

4 Q. K5 consists of two documents. Will you take a moment to
5 look at them?

6 A. Yes, sir.

7 Q. The first document is a draft of the second document; is
8 that fair to say?

9 A. That appears to be, yes, sir.

10 Q. Now, the -- can you take a moment, please, to tell me the
11 difference -- if you look at the paragraph that says, "Whereas
12 Pudles and Robertshaw each currently earn." Do you see that
13 paragraph? It's the third "whereas."

14 A. Yes.

15 Q. Okay. Can you tell us what the difference is between the
16 draft and the final agreement, in that paragraph?

17 MR. FLAMM: I'll withdraw that question.

18 Q. Let me --

19 A. The word "network" appears in the draft?

20 THE COURT: Why don't -- the question has been
21 withdrawn, I thought you said. Is that correct?

22 MR. FLAMM: I with -- I'll try and make it simpler.

23 BY MR. FLAMM:

24 Q. The final agreement says that "whereas Pudles and
25 Robertshaw each currently earn 350 per year in salary and they

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1 take" -- the word "matching distributions" has been added in
2 the final agreement; isn't that right?

3 A. I believe so, yes.

4 Q. In addition -- if you'll turn to the second page?

5 A. Of which -- of which document? The signed document or --

6 Q. I'm sorry. Of the final agreement.

7 A. Yes, sir.

8 Q. At the top of the page, that says -- when it spells out
9 the money, it says, "One million to Pudles and Robertshaw
10 each, August 1, 2010"; correct?

11 A. It does.

12 Q. And if you look at the --

13 MR. MITTS: Objection, Your Honor. That's -- that's
14 not what it says. There is -- objection. That's not what it
15 says. There is the Pudles -- Robertshaws -- the S that is
16 inserted across all of the definitions of "Robertshaw."

17 MR. FLAMM: That's -- stand corrected. It's -- but
18 it says that -- "one million to Pudles and Robertshaw" -- I
19 honestly didn't know that was an S -- "Pudles and
20 Robertshaws," if that's what it says, "each, August 1, 2010."

21 BY MR. FLAMM:

22 Q. Now, that didn't mean that there was a million to you and
23 a million to Barbara and a million to Bill Robertshaw; did it?

24 A. No, it didn't mean that at all.

25 Q. Okay. The first page of the draft agreement, where it

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1 specifies the million dollars, says, "One million in August
2 2010." And "in" does not appear in the final agreement.
3 Rather, it says, "August 1, 2010," a specific date; isn't that
4 right?

5 A. You're dealing with different paragraphs. Barbara's
6 lawyer had us take out that paragraph that you're referencing,
7 because -- well, I don't know why because; you'd have to ask
8 them. So this was a different paragraph and completely
9 different language that was part of changes requested by
10 Barbara Robertshaw.

11 Q. Are the changes as I said?

12 A. No, sir, this paragraph that you're referencing has
13 nothing to do with the paragraph that you're referencing in
14 the final agreement.

15 Q. I don't believe I asked whether it had anything to do
16 with it. I said, it has a specific date there, does it not.

17 A. The final agreement does have a specific date --

18 Q. Thank you.

19 A. -- yes, sir.

20 Q. If you'll go to the signature page of the final
21 agreement.

22 A. Yes, sir.

23 Q. The last sentence of section -- paragraph, whatever you
24 want to call it -- seven, at the top of the page. Could you
25 read that, please?

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1 A. "Neither party shall be required to personally guarantee
2 any indebtedness to support the special distributions; and
3 nothing herein shall be construed as a guarantee by either
4 party of payments to be made hereunder."

5 Q. Could you turn now to Exhibit N6, please.

6 A. Yes, sir.

7 Q. Have you seen -- you've seen this document before,
8 haven't you?

9 A. Oh, I believe I have, yes.

10 Q. And does this document reflect how the transaction was
11 done for the 2011 distribution to you of a million dollars?

12 A. I don't recall if it was correct. During the time there
13 was a transition going on in the accounting department. Our
14 CFO, Cindy Ravitch, was leaving the company; so in the middle
15 of -- and she was the one who sort of put the plan together as
16 to how everything was going to be handled. Unfortunately, it
17 didn't get -- it didn't get handled by the accounting staff
18 exactly right; so there was a number of communications back
19 and forth with some minor details that had changed; but the
20 overall accounting, the goals that I expressed in my
21 December -- sorry -- my September 3rd e-mail to the
22 Robertshaws, the goals that I expressed in my August 18th e-
23 mail to John Mitchell were certainly part of it. So as to
24 this particular e-mail, I would have to compare this to the
25 way the final -- the actual things, to make sure there isn't

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1 one or two entries that weren't incorrect, or statements that
2 weren't incorrect.

3 Q. Well, let's just start with what you may remember.

4 Number one, is that incorrect or correct?

5 A. I don't -- I don't know that to be correct or incorrect.

6 I would -- I'm assuming it's correct but I don't know for
7 sure.

8 Q. How about number two; is that correct or not?

9 A. See, I -- now, again, I don't know -- that may be
10 correct; but I thought that the money was transferred to me
11 via wire; but that could be correct. I don't know. I didn't
12 do the actual nuts and bolts of the transfers. But I have
13 testified that the money came from AnswerNet, so it came some
14 way. Whether it came in the form of a check or it came in the
15 form of a wire transfer, I don't disagree that it came from
16 AnswerNet Inc. The cash.

17 (Pause)

18 Q. All right. Now, when we left yesterday we were talking
19 about -- or, at least I thought we were talking about water --
20 your contention that Waterside somehow objected to -- excuse
21 me -- Barbara Robertshaw's warrant, which is -- which appears
22 as H23. Do you want to take a look at H23 so you know what
23 we're talking about?

24 A. Okay. Yes, sir.

25 Q. And I think I asked you whether there were any documents

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1 that indicated Waterside's objection to that. And you, I
2 believe, said that -- you referred to your Exhibits 63, 64 and
3 65; is that right? Is that correct?

4 A. That's not what I said.

5 Q. Okay. What did you say?

6 A. I said that my exhibit -- and I thought I was so
7 organized. Here. That my Exhibit 398 is that proof.

8 Q. 398, that's the only one?

9 A. That's the only one I can put my hands on right now.

10 Q. Okay. Are there any others that you recall?

11 A. There was -- there was communications between Waterside
12 and myself after the fact. But as I -- but as I explained
13 earlier, I had a computer crash that wiped away pretty much
14 most of my e-mails from 2000 -- middle -- early to middle
15 2006. So this is the one that I have that I know of. I'm
16 sure there were other communications.

17 Q. By the way, could you -- could you point me to the
18 notification that you gave us or that your counsel gave us
19 that you lost documents because of a computer crash?

20 A. First of all, you never -- you never -- I guess I'm
21 putting my counsel hat on. You never sent me a document
22 request for me personally. So -- documents that you
23 requested. Secondly, let's not forget that the first time
24 that you have made this claim that you own this one and a half
25 percent warrant was in your pretrial brief. In your amended

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1 complaint you stated that you -- that Executel owned these
2 warrants. So I had no reason to look for these kinds of
3 communications, because you changed your story at the last
4 minute, after all these years.

5 Q. So is it your testimony that the only documents on your
6 computer are your personal documents?

7 A. No. My -- no; and that's not my -- that's not my
8 contention at all.

9 Q. Well, did you have any AnswerNet records on your
10 computer?

11 A. I had records on my computer that I produced, that I --
12 that I gave to counsel to produce. Whether they were produced
13 or not is up to counsel.

14 Q. Did you lose any AnswerNet records that were on your
15 computer that -- any records that in any way related to this
16 case that were on your computer?

17 A. As I said, when we received -- remember, when you -- at
18 the end of discovery the issue of the Waterside warrant being
19 to your client wasn't at issue; and I had a release agreement
20 from -- from -- you know, approved by your client which
21 confirms that Waterside sold -- transferred that three-percent
22 warrant to Cerida and not your client. So, at the last minute
23 you make a claim suddenly that your client owns this warrant,
24 and then you're going to complain that I didn't get -- I
25 didn't look for e-mails that are not corporate documents but

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1 they certainly might be communications about a subject that we
2 didn't even know until the trial brief you planned on
3 litigating.

4 Q. I realize it's not possible to have the question read
5 back; but I think what I asked was, were there any AnswerNet
6 records on your personal computer. I think that's what I
7 asked.

8 A. And the answer to that is, I would guess there are, yes.

9 Q. Were any of those records lost as a result of this
10 computer crash?

11 A. I have -- not that I know -- I don't know, because I
12 don't know what was lost. It was 2006. I don't know what was
13 on the computer that was lost at that time.

14 Q. Well, why are you telling us now that you lost records on
15 your computer? What importance is that now?

16 A. You're asking me, Mr. Flamm -- I'm sorry, I guess I'm
17 confused, because what you're asking me is do I have any
18 additional proof that -- besides the release agreement, which
19 we've talked about at length --

20 Q. Let's identify that as a document.

21 A. I'm sorry. The release agreement, which is -- if a real
22 lawyer would tell me what that number is? 64. So the release
23 agreement in 64, which was -- which was done a year after your
24 claim that -- that the -- your client owned these warrants,
25 and -- a year afterwards; that --

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1 Q. That's an agreement between --

2 A. So that -- so that --

3 Q. -- Cerida --

4 A. -- document --

5 Q. -- and --

6 A. That doc --

7 Q. That's an agreement between Waterside and AnswerNet; is
8 that right?

9 MR. MITTS: Please, if we could just have one at a
10 time, it would give a better record.

11 And Your Honor, this really is argument.

12 THE COURT: Well, I think your client -- no, it's not
13 your client. I think the witness is doing a lot of argument
14 on the stand instead of responding directly to the questions.
15 I do agree that both the lawyer and the witness are talking at
16 the same time; and this has happened several times; and the
17 record is going to be quite confused.

18 Now, let's start all over again. Put your question, counsel.

19 And then, instead of arguing, answer the question.

20 THE WITNESS: Yes, Your Honor. I'm sorry.

21 BY MR. FLAMM:

22 Q. My question to you was, when I was asking you about what
23 documents you have that support the notion that Waterside
24 objected to Barbara Robertshaw's warrants that were identified
25 as H23, you said, among other things, that you had a computer

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1 crash. And then I believe you testified -- I'm not quite sure
2 what --

3 A. Okay.

4 Q. -- but it sounded to me like you were saying that it had
5 nothing to do with anything here in this case. So my question
6 to you then was, why did you raise that you had a computer
7 crash. Of what significance is that? What's gone? What's
8 missing? What do you think is missing?

9 MR. MITTS: Your Honor, I'd like to note an objection
10 for that. That's really not a proper question. If he has a
11 proper -- that was a very long narrative. If we could just
12 maybe take one bite at it?

13 THE WITNESS: I'm going to -- if I -- if I --

14 MR. FLAMM: No, just wait.

15 THE COURT: Well, you know, you're not representing
16 this witness --

17 MR. MITTS: No, Your Honor, but he is -- they're
18 asking about matters that relate to the corporation, and --

19 THE COURT: Yeah, I don't quite understand the
20 corporation's position in this anyhow, to tell you the truth.
21 There's no claim pending against the corporation, there's a
22 claim pending on behalf of the corporation. The corporation
23 is in this because -- it's named as a Defendant because it's
24 necessary for relief on the declaratory judgment action; but
25 passing that --

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1 Break up your question, please.

2 Can you -- let's see -- let's try first, can the witness

3 answer the question as it's posed to him?

4 I think the question basically is, why did you raise your

5 computer crash.

6 THE WITNESS: Because there was some subsequent e-

7 mails that I don't have. I don't know what they were, I can't

8 remember the dates; but there were -- there were subsequent e-

9 mails between Waterside and myself which talked about the

10 issue of percentages versus -- versus share -- numbers of

11 share.

12 BY MR. FLAMM:

13 Q. Subsequent to what?

14 A. Subsequent to March 20th.

15 Q. Which is the date that the warrant was executed.

16 A. Which is the date that the Waterside -- yes, the -- well,

17 I don't know when the warrant was executed; but it was the

18 date that I sent the warrant to Barbara Robertshaw and the

19 date that Waterside rejected this. And I believe you're

20 right, it was the date that -- well, I don't know when Ms.

21 Robertshaw signed it.

22 Q. So those documents, you're contending now, are relevant

23 to the issue of whether Waterside objected to Ms. Robertshaw's

24 warrants; is that right?

25 A. I'm contending those documents I don't have, but other

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1 documents that I do have in this case is the -- is the release
2 agreement. That's also the proof.

3 MR. FLAMM: Your Honor, may I move to strike?

4 THE COURT: Well --

5 MR. FLAMM: I mean, I really don't know what to do
6 here.

7 THE COURT: I'll consider it for whatever worth it
8 has. Can we move on?

9 BY MR. FLAMM:

10 Q. Besides the release agreement that you've cited as
11 Exhibit 64, is there any other writing that in your mind --
12 or, that you contend indicates or reflects Waterside's
13 objection to Barbara Robertshaw's warrant that's been
14 identified as H23?

15 A. I believe that all the documents which I've already
16 testified to that set out the ownership of the shares is
17 further proof of Waterside's objection and the ultimate change
18 in the ownership, and the decision to who's going to own it.
19 So that's my opinion.

20 Q. And those documents don't specifically object to Barbara
21 Robertshaw's warrant, which has been identified as H23, do
22 they?

23 A. They don't speak directly to the warrant that you've
24 described.

25 Q. And in fact there is no document that reflects an

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1 objection to her particular warrant, which has been marked as
2 Exhibit H23, other than perhaps your recitation of someone's
3 objection; isn't that right?

4 A. No, it's not correct.

5 Q. Okay. What, once again I ask you, is that document?

6 A. That document is Defendant's 398.

7 Q. Anything else?

8 A. Not that I can think of offhand.

9 Q. Now, is there any document from AnswerNet to Barbara
10 Watershaw -- Robertshaw, rather, indicating that her warrant
11 is no good.

12 A. Yes.

13 Q. What document is that?

14 A. The release agreement with Waterside and the e-mails --

15 Q. That's number 64?

16 A. That's number 64.

17 Q. Okay.

18 A. And the e-mails -- if you give me numbers -- the e-mail
19 where -- where we discuss the merger and I show Bar -- I
20 show -- I present the cap table to Barbara and Bill
21 Robertshaw, both in February and, I believe, in -- again, in
22 May.

23 Q. Not -- are you done?

24 A. I am done.

25 Q. Not one of them specifically says, "Ms. Robertshaw, your

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1 warrants" -- that have been marked here as H23 -- "are
2 invalid"; do they?

3 A. Those words don't appear in either -- any of those
4 docu -- they don't appear in the two e-mails. They certainly,
5 by reference, would appear in the -- in the release agreement.

6 Q. By -- is it your contention that the release agreement
7 refers to those documents?

8 A. It's my contention that the release agreement refers to
9 the three percent -- shares that -- half of which Barbara
10 Robertshaw's now claiming.

11 Q. And that speaks for itself.

12 THE COURT: What number is the release agreement?

13 MR. FLAMM: 64, Your Honor.

14 MR. MITTS: Number 64, Your Honor.

15 THE COURT: All right. Do I have that?

16 May I see it? I'd like to see it.

17 You can proceed while I read it.

18 Thank you.

19 (Pause)

20 BY MR. FLAMM:

21 Q. Mr. Pudles, there is no writing that goes to Ms.
22 Robertshaw revoking, voiding, declaring invalid her warrants
23 which appear as H23; is there?

24 A. Yes, there is.

25 Q. What document is that, sir?

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1 A. Defendant's 398.

2 Q. Okay. You -- that's a document that is direct -- never
3 mind, I won't argue with you.

4 Anything else?

5 A. Not that I can think of right now.

6 Q. There is no writing that reassigns that warrant for three
7 percent from Executel to anyone else, is there?

8 A. There's no writing that I know of that reassigns -- I'm
9 sorry. Reassigns this from -- reassigns what from whom to
10 whom?

11 Q. Barbara's warrants for 6,351 shares are half of the
12 12,704 shares, isn't that right?

13 A. Mr. Flamm, I've repeatedly testified that that warrant
14 was never a valid warrant. Therefore, there was no
15 reassignment of something that's invalid.

16 Q. I understand your position. Is there a document -- if
17 you'll look at H6, please. I think it's H6. H6 is an
18 assignment by Waterside to Executel of warrants for 75.75
19 percent of their share -- 18 percent, or 52,890 shares, and
20 provides an option in paragraph 2 to acquire 3 percent or
21 12,702 shares; isn't that right?

22 A. Part of what you said was right, part of it was wrong.

23 Q. Okay. Well, I'm sure you'll tell me what part was wrong.

24 MR. MITTS: Objection.

25 THE WITNESS: I'm sorry. Is that a question?

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1 MR. MITTS: Is that a question?

2 BY MR. FLAMM:

3 Q. Go ahead.

4 A. I'm sorry?

5 Q. Please tell me what was wrong.

6 A. They didn't own eighteen percent at the time of the
7 assignment of warrant.

8 Q. Anything else wrong with that statement?

9 A. Could you repeat the rest of the statement, please?

10 Q. I'll move on.

11 Is there a document that voids this document?

12 A. That voids this assignment of warrant?

13 Q. Yes.

14 A. No. Not that I know of.

15 Q. Now, you claim that there was an agreement between you
16 and Bill Robertshaw to -- how should I characterize it --
17 issue the three-percent warrant to Cerida?

18 A. Yes, sir.

19 Q. When was that made?

20 A. Sometime in March or April of -- or, sometime in early
21 2006.

22 Q. And how did that come about, please?

23 A. I can't -- well, I can't remember the conver -- exact
24 conversation, but I know that by -- I know -- I know that we
25 had it and we made the agreement.

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1 Q. What was the agreement?

2 A. That we were just -- we were going to take ownership of
3 the three-percent warrant -- share -- warrants in Cerida and
4 not personally.

5 Q. What prompted that discussion --

6 A. We --

7 Q. -- if anything?

8 A. I'm sorry. We've been having that discussion since the
9 very beginning. As you -- as you notice, we've been having --
10 we've been having that conversation --

11 THE WITNESS: I will try not to argue. I'm sorry,
12 Your Honor.

13 We were having that conversation even after Cerida
14 and Barbara and I made our payments to Executel.

15 BY MR. FLAMM:

16 Q. What prompted that discussion that you had, changing the
17 warrants?

18 A. I don't recall.

19 Q. Where did it happen?

20 A. We had a number of conversations, and I -- I can't say
21 specifically, but at that time we were -- we were talking
22 daily, when he was in the office; and if he happened to be out
23 in California during that period of time we would have been
24 talking on the phone; but at that point in time we were
25 talking -- we were talking daily, multiple times a day.

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1 Q. So is your answer you don't recall?

2 MR. MITTS: Objection.

3 THE WITNESS: My answer's my answer.

4 MR. FLAMM: I'll ask the question again.

5 MR. MITTS: Your Honor, he started with the response,
6 "I don't recall specifically but at the time we spoke multiple
7 times a day; and if he were in the off" -- and -- "over a
8 number of period of days." "Some of the time he was in the
9 office, some of the time he was in California and speaking on
10 the phone." That's -- I believe he's fairly responded to the
11 question.

12 BY MR. FLAMM:

13 Q. There's no writing memorializing that agreement, is
14 there?

15 A. Yes, there is.

16 Q. What -- please identify.

17 A. The release agreement from 2007 memorializes that
18 agreement. The reclassifica --

19 Q. Sorry to interrupt. That's number 64?

20 A. Number 64.

21 Q. Thank you.

22 A. The reclassification of the -- of the payments evidence
23 is that -- that agreement. The e-mail that I sent in February
24 outlining who owned the warrant shares or the shares of
25 AnswerNet confirmed that agreement. The e-mail that I sent in

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1 May confirming the cap table confirmed that agreement. The
2 conversation -- well, those were writings that absolutely
3 confirmed that agreement.

4 Q. Could you identify the e-mail in February?

5 A. Certainly. The -- somebody read the e-mail that Ms.
6 Robertshaw forwarded to Mr. Strauss, what's that number?

7 MR. MITTS: Oh, with the forty-four?

8 THE WITNESS: With the forty-four pages, yes.

9 MR. MITTS: I believe it is Plaintiff's 48.
10 Oh, excuse me.

11 BY MR. FLAMM:

12 Q. Mr. Pudles, it would be the exhibit that correlates from
13 the Barbara Robertshaw deposition, so you'll see it flagged --
14 I don't know if her deposition is still there?

15 MR. MITTS: It's not.

16 THE WITNESS: I would say that the e-mail -- the e-
17 mail and the cap table attached to the e-mail, which is listed
18 as Defendant's 40?

19 (Pause)

20 MR. FLAMM: May I approach, Your Honor?

21 BY MR. FLAMM:

22 Q. Mr. Pudles, I'm handing you Barbara Robertshaw's
23 deposition transcript.

24 A. Yes. This is -- it's the e-mail, then the cap table,
25 which is listed as Exhibit 33 to Barbara Robertshaw's

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1 deposition. The e-mail -- the other e-mail I'm referencing --
2 the other e-mail I'm referencing is number 67, which again --
3 which again demonstrates that Cerida owned those warrants.

4 LAW CLERK: Defendant's?

5 THE WITNESS: Yes, sir. I'm sorry. Defendant's 67.

6 BY MR. FLAMM:

7 Q. Are there any other documents that you contend
8 indicate --

9 A. Yes. All of the audited financial statements from
10 AnswerNet Inc. and Cerida, and AnswerNet combined, which are
11 all of the companies that we own. I'll represent that Cerida
12 owns 15 percent of the shares. So, therefore, in order for
13 Cerida to own that, they would have had -- that warrant would
14 have to have been owned by Cerida.

15 Q. Who supplies the information to the auditors?

16 A. In 2006, when this was first added, Michelle Ju.
17 Barbara Robertshaw's CFO.

18 Q. And where would she get that information?

19 A. From the books and records of the company. I don't know
20 where she got that information. She's the one who prepared
21 the audit book that went to the auditors that year.

22 (Pause)

23 MR. FLAMM: I have no further questions.

24 (Pause)

25 MR. MITTS: Your Honor, Mr. Rhoads has questions.

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1 Would you prefer that he go -- Mr. Rhoads has questions.

2 Would you prefer that he goes before I go?

3 THE COURT: That's entirely a matter between you and
4 Mr. Rhoads.

5 THE WITNESS: You could arm wrestle to decide.

6 MR. RHOADS: I can take him.

7 THE WITNESS: I bet you can.

8 MR. MITTS: Thanks a lot.

9 THE WITNESS: Unless there's food on the other side.

10 CROSS-EXAMINATION

11 BY MR. MITTS:

12 Q. Mr. Pudles, you were asked by Plaintiff's counsel about
13 the day-to-day running of AnswerNet back in 2007. Do you
14 remember that line?

15 A. I do.

16 Q. Okay. I'd like you to turn to Exhibit D107.

17 A. Oh, D107. Okay.

18 Q. Yes. In the --

19 A. Defendant's Exhibit 107.

20 Q. Yes.

21 A. Sorry. I see it.

22 Q. Okay.

23 A. I see it.

24 Q. Okay. This is an e-mail dated 4/30/2009. The Robert --
25 well, why don't you identify it for us.

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1 A. This is an e-mail from me to Bill and Barbara and John
2 Mitchell in response to an e-mail that Bill Robertshaw wrote
3 to me on April 30 -- earlier in that day.

4 Q. Okay. And I'd like you to read the part of the e-mail
5 that Mr. Robertshaw wrote to you and to John Mitchell, the
6 outside accountant and auditor.

7 A. Read all of it?

8 Q. Well, what is the subject matter about?

9 A. The subject matter is Mr. Robertshaw and I agreed and
10 decided to hire a CFO for our companies, and Mr. Robertshaw
11 wrote down what he believed are important traits of a CFO; and
12 my response was, "Excellent list."

13 Q. Okay. Thank you.

14 I'd like you now to go to Exhibit 140 in the same binder.

15 A. Yes.

16 Q. Can you identify this document for His Honor, please?

17 A. I can't. This wasn't my document.

18 Q. Okay. Fair enough then; we'll leave it there.

19 I think we're only going to go into plaintiff's exhibit binder
20 once, but I'd like to go back to Exhibit N15. N as in Nancy,
21 fifteen?

22 A. Yes, sir.

23 Q. Okay. You were asked briefly about this document. It's
24 August 18th 2011. So this is before the distribution is made?

25 A. Yes, sir.

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1 Q. Okay. Is this -- tell His Honor, what was the purpose of
2 this.

3 A. The purpose of this was to tell the CFO and our outside
4 auditor the goals of how we -- A, to -- that we needed to make
5 the distribution -- as I said here, "Please set up
6 distributions from me, from the various entities, based on Jay
7 and John's response to the e-mails in the amount of a million
8 dollars."

9 So the idea here was, right from the top that it was
10 going to come from various entities, not just AnswerNet Inc.
11 but the various entities as set out in the shareholder
12 agreement; and that the payment -- based on John or Jay's --
13 subject to the review, approval and direction of our outside
14 auditors.

15 Q. Okay. And the recipients of this e-mail -- I see that
16 Cindy Ravitch is copied on it, but the recipients, are those
17 the outside accountants?

18 A. Yes, it's John Mitchell, who is our partner-in-charge,
19 and Jay Brower, who is our tax manager in charge of our
20 account.

21 Q. Thank you. I'd like you to now go back to the
22 Plaintiff's binder.

23 A. That one is --

24 Q. Forgive me. To the Defendant's binder, 146.

25 A. Sorry.

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1 MR. MITTS: I apologize to the Court for these
2 binders. They were very expensive, and they don't stay
3 together well.

4 THE COURT: I've been there.

5 MR. MITTS: Oh, my goodness. Twenty-eight dollars a
6 binder.

7 THE WITNESS: Sorry, what was the number again, sir?

8 BY MR. MITTS:

9 Q. It's Exhibit D146.

10 A. Okay.

11 Q. Okay. Do you have that before you now?

12 A. I do.

13 Q. Okay. Can you identify that document for His Honor,
14 please?

15 A. This is a document prepared by the AnswerNet accounting
16 office, detailing the -- well, this document is an e-mail from
17 me to the Robertshaws -- from me to the Robertshaws.

18 Q. Okay. And what date is it?

19 A. The date is September 28, 2011.

20 Q. Okay. So this is about a -- almost a month after the
21 distribution?

22 A. Correct.

23 Q. Okay. And what was the purpose of this document?

24 A. It was really important to me that the Robertshaws at
25 least, you know, had -- well, I knew at this point Barbara

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1 didn't -- wasn't happy that she didn't get cash. It was very
2 important for me that she -- that both of the Robertshaws know
3 that all of the transactions were properly booked, that they
4 were booked accordingly, you know, and addressed, that they
5 were going to be -- again, that they were going to be paid
6 back and how.

7 Q. And this is the second e-mail that you sent after the
8 distribution?

9 A. No, I sent many e-mails, but this was a -- as I said
10 earlier, there were some minor tweaks to the journal entries
11 that needed to be done, and I don't do journal entries, but
12 when -- what they will do is they would do -- they would send
13 me what they thought had to be done, I would tell them, and
14 then they would make the appropriate record -- you know, marks
15 in the books and records.

16 Q. Thank you. The next document I'd like you to look at is
17 a little farther back in that same binder.

18 Oh, it's not, actually. It's Exhibit 202. It's in the next
19 binder.

20 A. Of course it is. No, 202 is in that binder.

21 Q. In --

22 A. Two oh two is not in the binder that's in front of me.

23 Q. Oh. Okay.

24 (Pause)

25 A. Okay.

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1 Q. Do you have Exhibit 202 before you now?

2 A. I do.

3 Q. Okay. Can you identify that for the record, please?

4 A. Two oh two is unanimous written consent of directors that
5 Barbara insisted we execute as part of the completion of the
6 financing and the mergers, and as part of her leaving the
7 oper -- her operational role in the company.

8 Q. Okay. It's not immediately apparent from looking at it
9 what the date is. Can you place this in a particular year for
10 us?

11 A. This was some time in mid 2007. It would have been
12 around the early part of June, which was when we got the
13 financing and -- to do the buyouts and do the mergers.

14 Q. Who are the signatories --
15 Now, this is unanimous written consent of directors of
16 AnswerNet Inc.

17 A. It is.

18 Q. Okay.

19 A. But it's as much a shareholder agreement as anything
20 else.

21 Q. Okay. And it has four signature lines?

22 A. It does.

23 Q. The signatures appear on two pages, because it's executed
24 in counterparts. Bill Robertshaw, Barbara Robertshaw, Gary
25 Pudles and a David Shaw.

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1 A. Yes.

2 Q. Who is David Shaw?

3 A. David Shaw was a board member of AnswerNet and somebody
4 who actually arranged the first meeting between Bill
5 Robertshaw and myself.

6 Q. Okay. The last document I want to direct your attention
7 to, Mr. Pudles, unfortunately is in binder one.

8 A. Of course it is.

9 Q. And it's -- worse, it's in the beginning of binder one;
10 it's number 37. But you mentioned this subject before, and
11 I'd just like to draw your attention to it so that we have the
12 document that correlates to your testimony.

13 A. Binder one. What number -- what number is it, sir?

14 Q. 37.

15 A. Okay.

16 Q. Mr. Pudles, can you identify this document for us?

17 A. Yes, the -- well, are you talking about the first page of
18 the Exhibit or the second?

19 Q. Well, why don't you take the first, and then we'll go to
20 the second.

21 A. All right. The first page is an e-mail from me to Bill.

22 Q. And what's the subject matter of this e-mail?

23 A. The corporate records.

24 Q. Corporate records of what?

25 A. Well, I -- AnswerNet -- AnswerNet and Signius.

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1 Q. And can you tell His Honor why you sent this e-mail to
2 Mr. Robertshaw back in February of 2007?

3 A. Yes, after I -- as I testified yesterday, after the board
4 meeting in which Bill and Barbara made a motion to assign
5 companies to themselves, I looked -- went looking for the
6 corporate records to find ways to stop that from happening.
7 And when I went to look, I found out that the AnswerNet
8 corporate records and files were missing. And I was asking
9 Bill where they might be.

10 Q. Okay. Now, you pointed to the second page of this e-mail
11 thread. What part of this is pertinent to that inquiry?

12 A. I'm sorry?

13 Q. You pointed to the -- you said there are two pages, at
14 the beginning of your answer. Turn to the second page?

15 A. Yes.

16 Q. What part of this e-mail thread is pertinent to that
17 issue?

18 A. Well, Bill responded that in -- with the current
19 activity, I wanted to look at the various books. So based on
20 the timing of this, it appears that prior to making that
21 motion, they were looking at -- they were looking at the books
22 so that --

23 Q. Can you -- can you read the bottom entry on page 2? It's
24 Bates-stamped BRE830. It begins with "Gary"?

25 A. "With the current" -- "Gary, with the current activity I

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1 wanted to look at the various books. They're on my table in
2 my office. Please let Betty know to take them from my office.
3 I didn't look at them; and if Betty is making a copy for you,
4 will you have her make a copy for me. Thanks."

5 Q. Okay. And that's how you found the location of the
6 books?

7 A. Well, that's how I found whatever I found. I don't think
8 we ever got them all back.

9 MR. MITTS: Okay. Your Honor, that's all I have for
10 Mr. Pudles at this time.

11 THE COURT: Very well.

12 Mr. Rhoads, how much do you have?

13 MR. RHOADS: Probably about ten, fifteen minutes,
14 Your Honor.

15 THE COURT: Pardon me?

16 MR. RHOADS: I just -- excuse me. I probably have
17 ten or fifteen minutes. I just --

18 THE COURT: All right. Let's take our mid-morning
19 break.

20 MR. RHOADS: Thank you.

21 (Recess from 11:17 a.m. until 11:34 a.m.)

22 MR. RHOADS: Thank you.

23 Good morning, Mr. Pudles.

24 THE WITNESS: Good morning.

25 MR. RHOADS: Counsel.

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1 CROSS-EXAMINATION

2 BY MR. RHOADS:

3 Q. Mr. Pudles, I'd like to ask you about certain documents
4 that we have produced -- I should say, that AnswerNet has
5 produced in the course of this litigation.

6 You have been the supervisor of Betty Babjak since she came to
7 work at AnswerNet in May of 2006, is that correct?

8 A. Correct.

9 Q. Her direct report, as some might say; is that right?

10 A. Correct.

11 Q. She testified that when she received the request for
12 inspection of documents by Barbara Robertshaw, as a
13 shareholder, in October of 2011, that she called the Mitts
14 firm and she called you. Do you recall her calling you? And
15 reporting that to you?

16 A. Yes.

17 Q. Do you recall Ms. Babjak telling you that she wished to
18 retain the outside law firm of Mitts Milavec to represent
19 AnswerNet's interests?

20 A. Yes.

21 Q. And did you approve that?

22 A. Yes. Immediately.

23 Q. All right. I'd like to refer to several documents in the
24 binder; but before I do, did you and Ms. Babjak have a typical
25 practice of her keeping you informed of what outside counsel

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1 was doing when she would engage outside counsel on behalf of
2 the company?

3 A. Yes.

4 Q. Were you typically copied on letters or provided with
5 copies of letters that outside counsel was sending on the
6 company's behalf?

7 A. In this matter?

8 Q. Yes, in this matter.

9 A. Yes.

10 Q. All right. Why don't you first turn to what's
11 Defendant's Exhibit 373. It's in the binder that has the last
12 set of exhibit numbers; 373.

13 UNIDENTIFIED MALE: Six? Volume 6?

14 MR. RHOADS: Volume 6, right.

15 (Pause)

16 THE WITNESS: I see it.

17 BY MR. RHOADS:

18 Q. Okay. This is an e-mail from Maurice Mitts. He was
19 AnswerNet's outside counsel at this time, is that right?

20 A. Correct.

21 Q. Dated October 19th 2011, addressed to Mr. Fitzpatrick, is
22 that right?

23 A. Correct.

24 Q. You were not copied, at least shown as a copy on this e-
25 mail. At some point in time did you become aware that Mr.

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1 Mitts sent an e-mail to Mr. Fitzpatrick on October 19th,
2 advising Mr. Fitzpatrick that the Mitts firm was acting as
3 counsel to AnswerNet?

4 A. I believe so.

5 Q. Okay. This e-mail says, in the second line, "Please
6 provide us with the list of the information you seek and we
7 will promptly reply to your inquiry."

8 Was it your understanding that that's what Mr. Mitts would be
9 doing in the first few days of the engagement?

10 A. Yes.

11 Q. Were you aware then that in the next few days Mr.
12 Fitzpatrick sent to AnswerNet both a request for -- or, a
13 demand for inspection on behalf of Barbara Robertshaw -- well,
14 first of all, let me leave it at that. Were you aware of that
15 demand?

16 A. I was.

17 Q. All right. And did you also become aware of another
18 letter, also on October 20th, which we -- other witnesses have
19 talked about here, where Mr. Fitzpatrick took the position
20 that Barbara Robertshaw, together with her interest in
21 Executel, controlled more than fifty-one percent of the
22 AnswerNet shares?

23 A. I remember seeing the letter where they said that.

24 Q. Okay. If you turn next to Exhibit 378, which is a letter
25 dated October 25th from Stanley J. Milavec of the Mitts

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1 Milavec law firm to Emmett Fitzpatrick. Do you see that?

2 A. I do.

3 Q. And in writing to Mr. Fitzpatrick, if you look at the
4 third paragraph, he says, "Second, you represented in one of
5 your letters that Barbara Robertshaw and Executel
6 Communications Corporation collectively hold fifty-one percent
7 of the shares of AnswerNet Inc. Please explain how you
8 arrived at this conclusion as this does not correspond to the
9 AnswerNet corporate records."

10 Now, I see that you are copied or shown as a CC on this
11 letter. Do you recall seeing this letter at or about the time
12 it was sent?

13 A. I recall receiving this letter, yes.

14 Q. At or about this time, had mister -- October 25th, had
15 Mr. Fitzpatrick provided AnswerNet or its attorneys, as far as
16 you know, with any information to establish Barbara
17 Robertshaw's right to vote more than fifty-one percent of the
18 shares?

19 A. No.

20 Q. If you would turn next to Exhibit 371.

21 This is a letter, again, on -- this is on Mitts Milavec
22 stationery from Maurice Mitts, November 1st. In other words,
23 it's about a week after the letter we just looked at, at 378.
24 Do you see this?

25 A. I do.

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1 Q. You're not shown as a CC on this letter, but do you
2 recall receiving this letter to Mr. Fitzpatrick?

3 A. I do remember seeing this letter.

4 Q. Okay. And in this letter Mr. Mitts is explaining to Mr.
5 Fitzpatrick the reason why he believes, based on information
6 presently available to him as AnswerNet's counsel, that Ms.
7 Robertshaw does not have the right to call a special meeting
8 of the shareholders because she doesn't hold more than fifty-
9 one percent of the stock; is that right?

10 A. Correct.

11 Q. In the third paragraph of this letter, you see Mr. Mitts
12 says, "Please be aware, however, that this firm has had
13 limited time to review AnswerNet's records and its
14 investigation with respect to AnswerNet's records is ongoing."
15 Was that true at the time?

16 A. It was.

17 Q. He goes on to say, "In that regard, I remind you that in
18 his October 24th 2011 letter to you, Stan Milavec requested
19 that you explain your contention that Barbara Robertshaw and
20 Executel Communications Corporation collectively own fifty-one
21 percent of the stock of AnswerNet. To date we have not
22 received any reply or explanation from you."
23 Was that true that as of the date of this letter, November 1st
24 2011 that AnswerNet or its attorneys had not yet received any
25 explanation as to how Barbara Robertshaw held fifty-one

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1 percent or more of the shares?

2 A. Correct.

3 Q. And in closing, Mr. Mitts goes on to further -- or, renew
4 his request for information that would establish Barbara
5 Robertshaw's ownership interest in fifty-one percent or more
6 of the stock; is that right?

7 A. Correct.

8 Q. Let's turn to 372 then. It's the next exhibit.

9 A. Thank you.

10 Q. See, this is also a letter from Maurice Mitts to Emmett
11 Fitzpatrick, this time dated November 10th 2011. You are not
12 shown as a CC on this letter. Do you recall receiving or
13 reviewing this at some point in time?

14 A. I do.

15 Q. Was this letter also in furtherance of the Mitts firm's
16 representation of AnswerNet as Betty Babjak had engaged them?

17 A. Yes.

18 Q. If you look at the second paragraph, it says, "The
19 information we reviewed as outside counsel in making an
20 initial determination that Barbara Robertshaw and Executel
21 Communications Corporation do not appear to hold fifty-one
22 percent of the outstanding shares of stock of AnswerNet are
23 contained within these documents and is summarized in a cap
24 table therein."

25 I neglected to mention that the first paragraph -- excuse

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1 me -- the second paragraph refers to enclosing certain
2 records; is that right?

3 A. Correct.

4 Q. Okay. In other words, he says he's enclosing copies of
5 the records that were provided to Mr. Fitzpatrick at the
6 October 28th document inspection, correct?

7 A. Yes.

8 Q. All right. Mr. Mitts goes on to say in the paragraph I
9 was just reading from, the third -- it's actually the third
10 paragraph. "Please be aware, however, that our investigation
11 into the precise shareholdings of AnswerNet is ongoing."
12 And he goes on later to say, with -- in the next paragraph,
13 "With respect to that investigation, I'm reminding you of two
14 items I raised in my November 1st letter to you which you did
15 not address in your November 2nd response."

16 And he goes on to again request information from Mr.
17 Fitzpatrick to substantiate Barbara Robertshaw's claim to
18 fifty-one percent or more control of the shares; is that
19 right?

20 A. Correct.

21 Q. As far as you know, was any such information forthcoming
22 to AnswerNet or its attorneys?

23 A. Mr. Fitzpatrick refused to provide the information
24 requested.

25 Q. This is November 10th. As you were sitting here in the

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1 courtroom earlier this week you heard testimony regarding
2 Defendant's Exhibit 175, which was the compilation of
3 documents, with a cover page that said, you know, "Documents
4 reviewed by Emmett Fitzpatrick on November 22nd 2011";
5 correct?

6 A. Correct.

7 Q. All right. So the documents I've just read from are the
8 ones that led up to arranging for that second inspection and
9 exchange of documents that occur with Mr. Fitzpatrick on the
10 22nd of November, correct?

11 A. That's my understanding, yes.

12 Q. Throughout the time of these documents I've just reviewed
13 with you, was the Mitts firm acting on behalf of AnswerNet in
14 conducting the investigation and providing certain opinions to
15 AnswerNet with regard to the share ownership as between the
16 shareholders?

17 A. Since the day we got the -- Ms. Babjak got the call and
18 letter from Mr. Fitzpatrick, the Mitts firm has been acting as
19 our counsel in all matters relating to this -- to the share
20 ownership of AnswerNet.

21 Q. And did the Mitts firm in fact conclude and continue to
22 conclude that the share ownership -- the control of the
23 AnswerNet board by virtue of share ownership, and you, Mr.
24 Pudles, and Cerida Investment Corporation, is the controlling
25 interest in the corporation?

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1 A. Yes.

2 Q. And did you also ask the Mitts firm for an opinion with
3 respect to your authority as the president of Cerida
4 Corporation to vote the shares of -- that Cerida holds in
5 AnswerNet.

6 A. Yes.

7 Q. Did they provide you with that opinion?

8 A. They showed me the law which supported that position,
9 yes.

10 MR. RHOADS: All right. Thank you very much. That's
11 all the questions I have.

12 THE WITNESS: If you may, Your Honor, I have one
13 quick thing?

14 I ask the -- just to -- I'm just going to quickly read into
15 the record --

16 THE COURT: Wait a minute. Who's speaking? I'm
17 sorry.

18 THE WITNESS: I'm sorry. That's me, Your Honor.
19 That's --

20 THE COURT: Oh.

21 THE WITNESS: Just two -- very, very brief --

22 THE COURT: Okay.

23 THE WITNESS: The briefest of things. I promise.

24 I'm reading N15. And in N15 -- I want to point out that the
25 date of this is before the distribution and -- and I just want

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1 to read into the record -- no, I think I've already read that.

2 Never mind. That's -- I have nothing, Your Honor.

3 MR. FLAMM: I just have two questions left.

4 THE COURT: Of course.

5 (Pause)

6 REDIRECT EXAMINATION

7 BY MR. FLAMM:

8 Q. Mr. Pudles, I've given you a document that I have not
9 marked as an exhibit, but I'd ask you just to -- I note you're
10 looking at it. Tell me when you're done.

11 A. I see it.

12 Q. Could you read the title?

13 A. It says, "Plaintiff Barbara Robertshaw's request for
14 production of documents directed to Defendant Gary Pudles."

15 Q. Do you recall receiving that?

16 A. I don't. I don't. I'd have to look on my computer
17 and -- but I don't recall receiving this.

18 Q. Do you deny receiving it?

19 A. I don't recall receiving it.

20 Q. Okay. Can you look at item 13?

21 A. I see it.

22 Q. What's that ask for?

23 A. "Any and all share certificates, LLC certificates,
24 agreements or other documents which reflect, relate to or in
25 any way reference Cerida Investment Corp.'s ownership of any

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1 interest in any other legal entity."

2 Q. And that is directed at you personally, is it not?

3 A. It is, but -- me pers -- in my personal capacity, I
4 wouldn't have authority to give away Cerida Inc. doc -- Cerida
5 Corporation documents. If they were Cerida documents -- I
6 don't recall ever seeing this, but I do recall -- I do know
7 that we gave you all of the corporate documents that we had in
8 AnswerNet. I don't recall this document, and I don't recall
9 my response to this document. Do you have my response to this
10 document?

11 MR. FLAMM: I think we'll mark that as -- and I'll
12 have to get a copy of it, Your Honor, subsequently -- as
13 Plaintiff's Exhibit --

14 UNIDENTIFIED MALE: Zero two.

15 MR. FLAMM: What?

16 UNIDENTIFIED MALE: Zero two.

17 MR. FLAMM: Plaintiff's Exhibit 02.

18 UNIDENTIFIED MALE: Oh two, not zero.

19 MR. FLAMM: Oh two. Oh as in Oscar. Two.

20 MR. MITTS: Your Honor, Mr. Flamm didn't have an
21 extra copy. Is it okay if I just walk up and look at the copy
22 that the witness has?

23 THE COURT: Of course.

24 (Pause)

25 BY MR. FLAMM:

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1 Q. Do you remember the Court ordering you to supply
2 documents?

3 A. No.

4 Q. Okay. You don't recall that.

5 A. No. Do you have a copy of a court order or a reply from
6 me that was then objected to by you?

7 Q. And you have been representing yourself throughout this
8 proceeding.

9 A. I have been representing myself. And I don't recall
10 receiving this, I don't recall a court order ordering me
11 personally to do anything. And I don't recall ever -- if I
12 would have received it, I would have responded to this; and I
13 don't recall ever responding to this. So if you have a
14 response, then I can look at what my response was to this
15 request.

16 Q. So is it your testimony that you did not receive the
17 document marked zero -- oh two.

18 A. My testimony is I have no idea what this is. I don't
19 recall it, I don't -- I'm not saying I didn't receive it, I'm
20 not saying -- I'm saying I don't recall ever receiving it. I
21 don't recall ever working on it. But that --

22 Q. You may -- you may --

23 A. But I'm running -- but I'm running a number of businesses
24 simultaneously as handling this case, so I can't say for sure.
25 There's discovery coming at me in many different forms, so --

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1 Q. All I'm trying to separate here is whether you're denying
2 it or whether you're saying you have no recollection
3 whatsoever.

4 A. I don't have a recollection.

5 MR. FLAMM: Thank you.

6 I have no further questions.

7 MR. MITTS: Your Honor, I just have a quick point of
8 clarification for the Court.

9 Well, Mr. Pudles may not remember, though, as I have
10 a copy of the docket entries from this case. And there was a
11 motion for protective order that Mr. Pudles filed relating to
12 this document request, because this document request, which
13 was served and due -- was served in January and due to be
14 responded to the last day of discovery, requested fifteen
15 years of information. And Judge Restrepo, docket entry number
16 114, entered a protective order relieving Mr. Pudles from any
17 obligation to respond to this, because he, in a written
18 opinion, said that there was abuse of conduct [sic] by
19 Plaintiff's counsel in serving such a massive document request
20 to be responded to on the very last day of the third discovery
21 extension. And there was an opinion in this case to that
22 effect.

23 MR. FLAMM: Document was simply offered because the
24 witness said he was never served with any discovery. That's
25 not true.

Colloquy

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1 THE COURT: Anything else?

2 MR. FLAMM: No further questions, Your Honor.

3 THE COURT: All right. The witness may step down.

4 THE WITNESS: Thank you.

5 (Pause)

6 MR. MITTS: Your Honor, I don't know the Court's
7 preference in terms of timing. Would you like -- I have
8 another witness.

9 THE COURT: Yes, let's call him for --

10 MR. MITTS: May --

11 THE COURT: -- for about, you know, twenty-five
12 minutes.

13 MR. MITTS: Perfect, Your Honor. Thank you so much.
14 The witness is out in the hall. It is John Mitchell, the
15 accountant auditor.

16 THE COURT: Fine.

17 MR. MITTS: Your Honor, also, just before we begin,
18 as a housekeeping matter, yesterday your Clerk asked me for a
19 better copy of the September 4th 2003 Waterside letter,
20 because it was -- it's -- actually, the letter's been faxed
21 three times. I have my team going through, finding a cleaner
22 copy. In the meantime what I did was I had it blown up on
23 eleven-by-seventeen paper, and I have marked it for
24 Identification. I call it blowup D175, because it's within
25 D175, and it's sub-Exhibit 4 to that document. I've provided

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1 a copy to Your Honor, to opposing counsel. I just wanted to
2 state it for the record.

3 THE COURT: Thank you very much.

4 MR. MITTS: And this is what has that -- the table on
5 page 3, the before, during and after?

6 THE COURT: Right.

7 JOHN MITCHELL, DEFENDANT'S WITNESS, SWORN

8 DIRECT EXAMINATION

9 BY MR. MITTS:

10 Q. Mr. Mitchell, can you position yourself in such a way
11 that you can speak directly into the mic? It makes a big
12 difference in the sound quality of the room, we've discovered.

13 Can you tell His Honor what your profession is, please.

14 A. I'm a certified public accountant.

15 Q. Okay. And where do you work?

16 A. Currently the name of the firm is G3 CPAs of
17 Pennsylvania. I'm the managing partner of the firm.

18 Q. Okay. And what was the name of the firm prior to being
19 G3?

20 A. Prior to G3 it was Gold Gocial Gernstein. Prior to that
21 it was Gocial Gernstein. Prior to that it was Gocial and
22 Company.

23 Q. Okay. If you could, please, give His Honor just a little
24 background, your education and employment experience.

25 A. Okay. I am a graduate of La Salle University, 1977. I

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1 have been a licensed certified public accountant since 1979.

2 I have worked in the field of public accounting my entire
3 working career, have been with my current firm in its prior
4 iterations since about 1991.

5 Q. Okay. Do you -- in addition to providing accounting
6 service, do you also provide audit services?

7 A. Yes, my practice involves accounting, auditing, financial
8 reporting, litigation consulting, expert witness testimony,
9 business valuations, things of that nature.

10 Q. Have you testified in court proceedings before?

11 A. Many times, yes.

12 Q. Okay. Have you been qualified as an expert previously?

13 A. Yes, I have.

14 Q. Okay. Are you familiar with the company AnswerNet?

15 A. Yes, I am.

16 Q. Can you tell His Honor how you came to be familiar with
17 that company? And what would be helpful is for you to give a
18 historical perspective.

19 A. Well, before there was AnswerNet, I knew Gary Pudles
20 through -- our kids went to preschool together. Gary moved
21 into the same neighborhood that we lived in, in Lafayette
22 Hill; got to know Gary through the synagogue and through
23 preschool; and Gary was a practicing attorney at that time
24 that was general counsel for some other privately-held
25 businesses but, you know, Gary used to talk a lot about

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1 developing his entrepreneurial spirit. So I've probably known
2 Gary since about 1995, 1996. At some point, 1997, 1998, Gary
3 left his prior employment, where he was general counsel, and,
4 if I remember this correctly, went onto the internet, found a
5 business that he thought that he could enter into, the tele
6 services, the telemessaging business, and sought out to
7 acquire a telemessaging company.

8 Q. Okay. And do you know what -- anything about the
9 creation of AnswerNet?

10 A. Yes, I do. I worked with Gary -- this was really before
11 he became a client. He identified a company, a telemessaging
12 business, in the Princeton, New Jersey area, that I helped
13 Gary do some due diligence. The owner of that business, after
14 a fairly protracted period, decided that he was not going to
15 sell that business; but we were up in the Princeton area
16 and -- I don't know how the name Bill Robertshaw came up or
17 what the exact connection was, but Gary and myself wound up in
18 Bill Robertshaw's office in Princeton, after this failed
19 attempt to buy the other business, and we had a three-way
20 meeting -- or, it was really a meeting between Bill and Gary,
21 and I was just observing. And at that point, you know, Bill
22 looked at Gary and said something along the lines that "you
23 know what, you're a bright young guy, I'm sorry that Sandy did
24 not want to sell his business to you, but we own a number of
25 these businesses and I'm going to give you a chance to" -- you

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1 know, "perhaps we can do something, you can be my daughter's
2 partner in one of these." His daughter being Barbara,
3 obviously. And at that --

4 Q. What year are we in?

5 A. This was -- this is, I think, 1998.

6 Q. Okay.

7 A. And that's how it all started, really out of a failed
8 attempt to buy another business, where the owner decided not
9 to sell, he met Bill; and AnswerNet was born, thinking
10 sometime in the spring, early summer of 1998.

11 Q. Okay. Were you present with any discussions about what
12 the ownership interests were going to be between Barbara
13 Robertshaw and Gary Pudles?

14 A. With respect to AnswerNet -- and AnswerNet started with a
15 company called Tel-A-Talk, which was based in Allentown; and
16 Gary, in effect, acquired a fifty percent interest in that
17 business from the Robertshaws. Really, from -- from day one
18 it was equal partners, fifty-fifty; and that's the way that
19 the relationship was set up.

20 Q. Was it also that same fifty-fifty with respect to
21 acquisitions?

22 A. I believe so. I believe so. After AnswerNet was
23 established with -- with Tel-A-Talk, and then Signius was
24 acquired, and then after that this company Cerida was formed
25 to do another acquisition; and that was a fifty-fifty company

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1 with Barbara and with Gary; and -- and again, my
2 understanding, just in talking to the parties over the years,
3 primarily Gary, was that, whenever there were opportunities,
4 they were to be brought to the partners, with the idea being
5 that they would each have the opportunity to invest in these
6 deals on a fifty-fifty basis.

7 Q. Okay. And the partners that you're referring to are?

8 A. Really, Gary as one fifty -- as one side of the fifty and
9 Barbara as the other side; but Barbara was also, you know,
10 kind of behind the scenes; and her father, Bill Robertshaw,
11 was in effect Barbara's proxy for -- for many of these deals.

12 Q. When do you start doing the accounting or audit work for
13 AnswerNet and the growing family of companies?

14 A. It would have been after the first acquisition in 1998,
15 because as a result of that AnswerNet, at the outset, had some
16 outside equity in it; and those outside investors required
17 audited financial statements. So, really, with the very first
18 year we did audited financial statements of AnswerNet and did
19 all of the tax work for the companies from inception, and
20 continue to this day.

21 Q. Did you have an opportunity, when AnswerNet's offices
22 were in New Jersey -- in Princeton, New Jersey, to observe the
23 working relationship between Mr. Robertshaw and Gary Pudles?

24 A. Yes, I did, many times.

25 Q. Can you describe that relationship to His Honor, please.

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1 A. It was cordial. Offices side by side. In many respects,
2 it was like father-son, big brother-little brother. You know,
3 Bill loves the art of the deal, Bill loves doing deals. He
4 had a very energetic, outgoing partner in Gary who also lived
5 to do deals; and I remember, you know, Gary spent many a --
6 many years driving from the Lafayette Hill area up to
7 Princeton; and I think -- you know, a long commute every day,
8 but he got to sit there and talk and do business with Bill.
9 And I mean, that was -- when we would go out there to do the
10 audits and whatnot, you know, I think there was really a
11 pretty good spirit in the office; and there was a lot of
12 communication back and forth. And when Bill was in town, he
13 and -- he and Gary were pretty tight and, you know, talked
14 daily. Did a lot of great stuff -- did a lot of great things
15 together.

16 Q. You said in one of your earlier answers that Mr.
17 Robertshaw was a proxy for Barbara Robertshaw. What did you
18 mean by that?

19 A. Bill had always related to me that, you know, Barbara was
20 an investor, Barbara liked to stay behind the scenes. Bill,
21 for the most part, represented Barbara's interests in many of
22 these things. When Bill and Gary, you know, did the first
23 deal in Allentown for Tel-A-Talk, it was a company that
24 Barbara owned but, you know, Bill was the guy that was kind of
25 managing the day-to-day relationship with Gary. So most of --

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1 most of Gary's dealings with Bill, when it came time to the
2 actual finances and the ownership of the company -- you know,
3 when they formed Cerida to do acquisitions, it might have been
4 Bill and Gary doing the acquisitions, but Barbara was the
5 partner on paper.

6 Q. Okay. What was your level of access to Mr. Robertshaw?

7 A. Totally unfiltered. In addition to having a very open
8 relationship with Gary, I've also enjoyed having a very open
9 relationship with Bill over the years. Bill could call me at
10 any time. Bill and I have had numerous discussions over the
11 years on any number of topics. And, you know, it was -- it
12 was free -- free and open, with no restrictions.

13 Q. Do you also do either accounting or audit work for any of
14 the Robertshaw companies?

15 A. We do audit and tax work for one company in which Barbara
16 is one of the primary shareholders that Gary is not a
17 shareholder. That company is called Endicott. And that's a
18 company that has seven or eight or ten different shareholders.

19 Q. And Mr. Pudles is not one of them.

20 A. Mr. Pudles is not one of those, no.

21 Q. Okay. Now, you said -- you made a reference to
22 acquisitions through Cerida. Can you explain what you were
23 referring to?

24 A. The way that the company grew is that AnswerNet was the
25 first company, and AnswerNet was initially owned fifty-fifty

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1 by Barbara and Gary. In order to fund some additional
2 acquisitions, Gary went out and attracted outside investor
3 capital. The group was called Waterside. They owned some
4 preferred stock for a period of years.

5 I think Gary at that point decided that if he was going to
6 expand AnswerNet or expand in the telemessaging business, he
7 wanted to make money for himself, Barbara and Bill, and not
8 necessarily for Waterside. So from 1998 and then 2000, Gary
9 and Bill did a -- what turned out to be a phenomenal
10 acquisition with this company called Signius, which is really
11 the biggest individual company.

12 Signius was acquired from a group of private equity types that
13 had, you know, taken a forty or fifty million dollar revenue
14 company, burned through forty or fifty million dollars of
15 investor capital, ran it into the ground; and Bill and Gary,
16 you know, together, bought it for literally 100,000 dollars
17 and nurtured the company back to life and made it into a
18 phenomenal success story. But in buying Signius, that
19 business also had outside investors in it, legacy investors,
20 some shareholders that had owned Signius shares and continued
21 to own Signius shares up until 2007. So it was not a fifty-
22 fifty/Barbara-Gary company.

23 A couple of years later -- and again, I'm not sure where
24 the lead came from, but the company Cerida was formed; and it
25 was formed to acquire an outbound marketing company in the

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1 Boston area; I think, by the name of Cerida. And at that
2 point Cerida was formed as a fifty-fifty company, Barbara and
3 Gary; and that became the acquisition vehicle. And most of
4 the other acquisitions that happened after that time all were
5 funneled into Cerida. And again, my discussions with Gary,
6 and recollection is, let's put all of the new stuff into
7 Cerida so we don't have to share it with the Watersides of the
8 world and we don't have to share it with some of the legacy
9 Signius investors.

10 Q. Was Mr. Robertshaw also privy to those conversations, and
11 involved in them?

12 A. With respect to Cerida -- Mr. Robertshaw -- in my mind,
13 Mr. Robertshaw was privy to everything. You know, the way
14 that it -- the way that it worked -- after the Signius
15 acquisition, which was on March 1st 2000, you know, Mr.
16 Robertshaw pretty much became the hands-on operating manager
17 for that business. Gary was the hands-on operating manager
18 for the AnswerNet business and for the Cerida businesses. And
19 that's how they divided the operational responsibility.

20 Q. I'd like to now take you to the 2003 time period. With
21 respect to Waterside Capital Corporation, do you know that in
22 2003 there was a sale of some of the warrants that Waterside
23 Capital held in AnswerNet to Executel?

24 A. Yes. I'm aware of that, yes.

25 Q. Okay. Can you tell His Honor what your historic

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1 understanding is of that.

2 A. My historic understanding was that as part of their
3 preferred stock deal --

4 THE COURT: Can we establish first what personal
5 knowledge he has of it? Not what his understanding of it is.

6 MR. MITTS: Much better, Your Honor. Thank you.

7 THE COURT: Yeah. I want to know what he had to do
8 with it.

9 MR. MITTS: Okay.

10 BY MR. MITTS:

11 Q. His Honor's request for clarification is an excellent
12 question. Can you explain what your involvement and source of
13 knowledge is about the Waterside deal back in the day.

14 A. Back in the day, my source of knowledge would have been
15 receiving the documents and the correspondence between
16 Waterside and Executel, where Executel acquired -- I believe
17 the number was 52,900 shares of warrants which were converted
18 into shares of AnswerNet stock. And that was all part of the
19 Waterside warrant package as part of their preferred stock
20 holdings in AnswerNet.

21 THE COURT: Well, counsel, if he's only testifying
22 about what he knows from documents that are in evidence and
23 had nothing to do with the transactions themselves, I don't
24 know that his testimony is going to be particularly helpful.

25 BY MR. MITTS:

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1 Q. Did you have any involvement in the way in which the
2 books and records of AnswerNet were reflecting the treatment
3 of the Waterside warrants back in the day?

4 A. The -- well, at the AnswerNet level, once -- once
5 Executel acquired the AnswerNet warrants, Executel became a
6 shareholder of AnswerNet; and AnswerNet's capital stock
7 structure changed as a result of that. That would have been
8 something that was reflected in our audited financial
9 statements.

10 Q. Okay. And is that something that your team was working
11 on in terms of creating?

12 A. Recording. Recording the transactions based on the
13 documents that had been given to us that evidenced the
14 purchase of the warrants by Executel.

15 Q. Now, in addition --

16 MR. FITZPATRICK: Your Honor, I have an objection.
17 And I move to strike that. The question to the witness was,
18 "Did you have any involvement in AnswerNet's treatment of that
19 transaction on its books and records." And the witness
20 replied that his only involvement was his treatment in his own
21 financial statements, not AnswerNet's. So it's not responsive
22 to the question.

23 MR. MITTS: No, he said this is AnswerNet's audited
24 financial statements.

25 THE COURT: Well, he explained what his part -- what

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1 he did. That's what I really wanted --

2 MR. FITZPATRICK: Very well, Your Honor.

3 THE COURT: So that's -- that's fine. Let's move on.

4 MR. MITTS: Sure.

5 BY MR. MITTS:

6 Q. Now, with respect to the deal with Executel, did you also
7 understand that Executel, in 2003, for 5,000 dollars, bought
8 an option on another three percent of Waterside's warrants in
9 AnswerNet?

10 A. I knew that there was another transaction between
11 Executel and AnswerNet but was not aware of the purchase price
12 or the fact that it was an option.

13 Q. Okay. In -- let's go -- let's go -- bless you.
14 Let's go forward to the 2006 period. Do you know what
15 happened with the Executel option for three percent of the
16 Waterside warrants?

17 A. The Executel option was purchased by Cerida.

18 Q. Okay. And how do you know that?

19 A. Because at that time, in addition to doing the audit of
20 AnswerNet, we were also doing compiled financial statements
21 for Cerida; and that was prior -- and then also we were doing
22 the Cerida tax returns; so we were, you know, doing, in
23 effect, the year-end accounting for all of the,
24 "Pudles/Robertshaw entities".

25 Q. Okay. If we were to look at the 2006 Cerida financial

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1 statements and the 2006 Cerida tax returns, would the source
2 of the funds for the exercise of that warrant be evidenced
3 there?

4 A. Uh --

5 Q. I mean, for the -- I didn't say -- I said "exercise." I
6 meant, purchase of the warrant be reflected there.

7 A. Yes, it would.

8 Q. Mr. Mitchell, there are a number of big black binders in
9 front of you.

10 A. Yeah, I see.

11 Q. One of them is -- one of them is volume two of
12 Plaintiff's Exhibits -- I'm sorry -- Defendant's Exhibits.
13 And it goes from 176 to 206. Do you have that before you?

14 A. I do, yes.

15 Q. Okay. Can you ident -- let me let you get there first.
16 I'm sorry.

17 A. I'm in the binder.

18 Q. Okay.

19 A. What tab number?

20 Q. Tab number 203, please.

21 A. Okay. I'm there.

22 Q. Okay. First, can you identify this document for His
23 Honor?

24 A. This is the compiled financial statement for Cerida for
25 the years ending December 31st 2007 and 2006 that was prepared

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1 by my firm.

2 Q. Okay. Is there any doc -- any portion of the financial
3 statement that would show the source of funds for the exercise
4 of the -- I'm sorry -- for the purchase of the Waterside
5 warrant by Cerida in this document.

6 A. This will show what happened in 2007. By looking at the
7 consolidated balance sheet, you can see that the investment in
8 AnswerNet warrants increased from 731,000 to 981,000, 250,000
9 dollars, during the year 2007.

10 Q. Now, I'd like to direct your attention. You'll see at
11 the lower right-hand corner of each page there is a Bates
12 number. Go to page BRE207. And let me know when you're
13 there.

14 A. I am there.

15 Q. Okay. About three-fourths of the way down, under the
16 non -- the heading "non-investing and financial activities,"
17 the very last entry is "investment in AnswerNet, warrants
18 funded by shareholder loans, 131,000, for the year 2006."

19 A. That -- that is correct.

20 Q. Can you explain to His Honor what that is?

21 A. That was part of the purchase in 2006 of AnswerNet
22 warrants by Cerida, which was really done in two pieces.
23 There was a 250,000-dollar payment to Executel, which is
24 reflected midway up the page, under "cash flows from investing
25 activities," second line, "investment in AnswerNet warrants,

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1 250,000 dollars," as well as the second piece was 131,000
2 dollars, which were shareholder loans, 65,500 dollars to Gary
3 and 65,500 dollars to Barbara, for the second part of that
4 transaction. The total purchase price for that basket of
5 warrants was 381,000.

6 Q. Did that consist of 5,000 for the option and 376 for the
7 warrant?

8 A. I know -- I know the total purchase price was 381; and,
9 again, I had no knowledge that the option itself was 5,000
10 dollars.

11 Q. Okay. Now, in addition to the financial statements, did
12 Cerida file tax returns for the year 2006 that would have
13 reflected the shareholder loans that you just testified to?

14 A. Yes, it would have.

15 (Pause)

16 Q. Mr. Mitchell, I've handed you a document that we've
17 marked for Identification as Exhibit 402. Can you identify
18 this for the Court, please?

19 A. Yes, this is the 2006 Cerida federal income tax return.

20 Q. Okay.

21 MR. FITZPATRICK: Your Honor, I'd like to pose an
22 objection at this point. This is not listed as an exhibit.

23 MR. MITTS: They -- they -- first they have switched
24 counsel, so --

25 THE COURT: Pardon me?

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1 MR. MITTS: They have -- we -- they've got two
2 lawyers that are speaking as to the --

3 MR. FITZPATRICK: We did -- I apologize.

4 THE COURT: All right. I will regard the objection
5 made by Mr. Flamm as made by Mr. Fitzpatrick.

6 MR. FITZPATRICK: Actually --

7 MR. FLAMM: The reverse.

8 MR. FITZPATRICK: The reverse.

9 THE COURT: All right. The reverse then.

10 MR. FITZPATRICK: Sorry.

11 MR. FLAMM: Thank you.

12 THE COURT: All right. You know, without a jury
13 here, I'm not going to worry too much about that rule. I
14 mean, I'd rather get to the substance of the matter, frankly.

15 MR. MITTS: Certainly, Your Honor.

16 BY MR. MITTS:

17 Q. Mr. Mitchell, can you identify this document for His
18 Honor, please?

19 THE COURT: Well, the question is -- it wasn't listed
20 as an exhibit, is the objection.

21 MR. MITTS: No, Your Honor, it wasn't, because this
22 was identified as rebuttal to the issue that they raised for
23 the first time in their pretrial. The very first -- as we
24 developed through the cross-examination of Barbara Robertshaw,
25 the first time that they changed it -- their story, as

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1 Plaintiffs, from Executel owning this three percent to Barbara
2 Robertshaw owning one and a half percent is in the pretrial
3 and in her testimony here. And so this is offered as rebuttal
4 and impeachment evidence for Barbara Robertshaw's newly-
5 asserted claim of one and a half percent --

6 THE COURT: Okay. I will listen to it and reserve
7 judgment on the question. And as soon as you finish your
8 questioning on this return, we'll take our lunch break.

9 MR. MITTS: Thank you, Your Honor.

10 MR. PUDLES: Maurice, on the record, it's also --
11 it's rebuttal to her testimony.

12 MR. MITTS: Yes.

13 BY MR. MITTS:

14 Q. Okay. Mr. Mitchell, can you please identify this
15 document for the record.

16 A. Yes, this is the 20- --

17 THE COURT: He has. He has.

18 THE WITNESS: Yes.

19 THE COURT: He's already identified it.

20 BY MR. MITTS:

21 Q. This is the 2006 Cerida tax return?

22 A. Correct.

23 Q. I was asking you a moment ago, is there any portion of
24 the 2006 Cerida tax return which reflects the shareholder
25 loans from Mr. Pudles and Ms. Robertshaw to Cerida for the

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1 purchase of the stock warrants from Waterside?

2 A. If you turn to page 4 of the tax return, Schedule L,
3 which is the balance sheet -- Cerida's balance sheet.

4 Q. Yes, I have it.

5 A. Line 19 of Schedule L is loans from shareholders?

6 Q. Yes.

7 A. And the balance at the beginning of the year, January 1st
8 2006, was 129,057?

9 Q. Yes.

10 A. The balance of loans from shareholders at the end of the
11 year, December 31st 2006, is 260,057. The difference is
12 131,000 dollars, which is the 265,500 dollar notes, one from
13 Gary, one from Barbara. It's the same 131,000 that was
14 reflected in the compiled financial statement that we looked
15 at a moment ago.

16 Q. Okay. And was this tax return prepared by your firm?

17 A. Yes, it was.

18 Q. And was the information in this return shared with the
19 Robertshaws?

20 A. The process at the time -- and I just want to be exactly
21 clear here. The process at the time is that Gary was -- had
22 primary responsibility for reviewing the AnswerNet and the
23 Cerida returns. Bill had primary responsibility for reviewing
24 the Signius returns. If Bill -- Bill may have reviewed this
25 return, but he probably would have reviewed -- if he reviewed

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1 this return prior to its issuance, it probably would have --
2 he probably would have gotten it from Gary. At any time up
3 until 2011, when this litigation commenced, if Bill had asked
4 us for a copy of this return, we would have given it to him.

5 THE COURT: Well, that's all -- wait a minute. He
6 doesn't know.

7 MR. FLAMM: Right.

8 BY MR. MITTS:

9 Q. Did you regularly provide information to Mr. Robertshaw,
10 upon his request?

11 A. All the time, yes.

12 Q. Did you ever deny his requests?

13 A. No.

14 Q. Okay.

15 THE COURT: All right. I think we can take our lunch
16 break.

17 MR. MITTS: Let's take our lunch break, and we'll
18 come back.

19 Oh, Your Honor, what time would you like us back today?

20 THE COURT: One-thirty, please.

21 MR. MITTS: Thank you, Your Honor.

22 (Recess from 12:28 p.m. until 1:35 p.m.)

23 MR. MITTS: May I continue, Your Honor?

24 THE COURT: Please do.

25 MR. MITTS: Thank you.

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1 BY MR. MITTS:

2 Q. Mr. Mitchell, before the lunch break we were look at
3 Exhibit 402, the Cerida 2006 tax return.

4 In 2002 -- forgive me. In 2006 who were you working with
5 at the AnswerNet offices on the underlying numbers that you
6 were using for the returns?

7 A. For the year ended 2006, either -- that specific year
8 Michelle Ju had come over from Signius to help with the 2006
9 AnswerNet and Cerida year-end numbers because the control --
10 AnswerNet's CFO at the time had left right before the start of
11 the year-end tax season.

12 Q. Okay. And do you know who Ms. Ju reported to in the
13 Princeton office?

14 A. Michelle reported to Bill.

15 Q. Bill Robertshaw?

16 A. Yes.

17 Q. Okay. Now, the shareholder loans that you've identified
18 in the 2006 Cerida tax return, do you know if they appear in
19 the succeeding year's tax returns?

20 A. They do.

21 Q. Okay. Did you have involvement in preparing the 2007 tax
22 return?

23 A. Yes.

24 Q. And do they appear in that return?

25 A. Yes.

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1 Q. Okay. How long do they continue to appear in the Cerida
2 tax returns?

3 A. They continue up through 2010, and they were repaid in --
4 as -- really through the -- they appear as shareholder loans
5 through the end of 2010; and in 2011, as part of the special
6 distribution, the loans that were payable to Barbara were
7 memorialized in a note; and Gary repaid himself some of his --
8 his shareholder loans as part of that special distribution.

9 Q. Now, in 2008 do you know anything about the financial
10 transaction of Cerida exercising the Waterside warrants, the
11 three-percent Waterside warrants?

12 A. In 2008?

13 Q. Yes.

14 A. Can you show me a document to refresh my memory?

15 Q. Sure.

16 Which document would be most helpful to you on that?

17 A. Well, what I would look for would be a Cerida financial
18 statement in any year in which the warrants were exercised or
19 purchased by Cerida; we would see an increase in the
20 investment in AnswerNet warrants in the Cerida financial
21 statements. And that happened over a two or three-year
22 period.

23 Q. Would the AnswerNet general ledger provide this
24 information also?

25 A. If AnswerNet -- if AnswerNet made a payment, yes, it

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1 would. If Cerida made the payment, it would be recorded on
2 the Cerida general ledger.

3 Q. There's a -- I just have a question so I'm making sure
4 that I'm locating the right document for you.
5 I'm looking at, for example, a document that is the combined
6 financial statements for AnswerNet. Would that include the
7 information that you are looking for?

8 A. Yes, it would.

9 Q. Okay. Then I'd like to direct your attention to --
10 again, we're in exhibit binder number 2. Exhibit tab 204,
11 please.

12 A. I'm there.

13 Q. Okay. Now, can you show us in this exhibit where you
14 would find the supporting entry regarding the exercise by
15 Cerida of the Waterside warrant?

16 A. If you look -- if you look at page 2 of that document,
17 which is Bates stamp number 5576, this is a combined balance
18 sheet which includes AnswerNet, its subsidiaries plus Cerida.
19 plus some other commonly-owned entities.

20 Q. Yes.

21 A. And in the equity section of that balance sheet, you
22 would see a caption, "Cerida Investment Corp. investment in
23 AnswerNet Inc."

24 Q. I see it.

25 A. And it has a --

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1 Q. That's the fifth line down -- or, fourth line down?

2 A. That is the fourth line down. And it has a balance of
3 1,231,059 for both the year ended December 31st 2011 and 2010.
4 And that represents the cumulative payments that had been made
5 by Cerida to purchase AnswerNet warrants up through the end of
6 2011.

7 Q. Okay. Thank you.

8 I'd like to -- since we're in this exhibit, I'd like to direct
9 your attention to note 11 of this exhibit. It appears on page
10 AN5592?

11 A. I'm there.

12 Q. Okay. You see the heading, "capitalization"?

13 A. Yes, I do.

14 Q. Okay. Can you explain to the Court, please, the
15 significance of this second paragraph with respect to the
16 Cerida shares in AnswerNet.

17 A. This was a note that was carried over and updated from
18 year to year. It basically explains -- or, identifies
19 Cerida's acquisition of the AnswerNet warrants over a period
20 of time. And it just kind of lays out the ownership of all of
21 the entities that are included in the financial statements and
22 which companies -- basically, who owns what.

23 Q. All right. And you said this was carried over from year
24 to year.

25 A. From year to year, it is -- you know, in 2006, 2007, and

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1 maybe 2008. Cerida was acquiring a chunk of warrants each
2 year.

3 Q. All right. Now, you made a reference a moment ago about
4 the distribution to Mr. Pudles and Ms. Robertshaw. That's the
5 distribution in the summer of 2011?

6 A. Correct.

7 Q. Okay. You understand that Mr. Pudles received a lump-sum
8 payment of 980,000 dollars?

9 A. Correct.

10 Q. Okay. What is your understanding of what Ms. Robertshaw
11 received, and what's the source of that understanding?

12 A. Ms. Robertshaw also received 980,000 dollars but she did
13 not receive it at the same time as Mr. Pudles. It was paid
14 out over a period of several months. My -- the source of my
15 understanding is really an analysis that was prepared by the
16 AnswerNet CFO as to how they would account and fund the
17 special distribution to Mr. Pudles and at the same time make
18 sure that Ms. Robertshaw also received the same amount of
19 dollars in terms of a distribution. Total gross dollars.

20 Q. Do you -- you understand she also received interest
21 payments because her payments were over time?

22 A. Because her payments were made over time, she received
23 interest on her money, and she did.

24 Q. Now, a few moments ago I was questioning you about the
25 shareholder loans that appear in the tax returns and in the

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1 Cerida and AnswerNet financial statements.

2 Do you know if the distribution to Ms. Robertshaw had any
3 relationship to those outstanding shareholder loans by her?

4 A. As part of the distribution to Ms. Robertshaw, all
5 shareholder loans, including the shareholder loan from Cerida,
6 were eventually repaid.

7 Q. Mr. Mitchell, I'd like to draw your attention to one of
8 the loose exhibits that's before you. It's been marked for
9 Identification as Exhibit 400 -- D400. It's a landscape
10 document.

11 A. I have it.

12 Q. There are four -- it's entitled "notes payable to Barbara
13 Robertshaw as of August 31, 2011."

14 Were you familiar with these loans prior to the repayment of
15 these loans?

16 A. Yes, I was.

17 Q. Okay. So the amounts of the loans are in the first
18 column, under "principal balance due." 50,985; 50,080; 80,028
19 dollars. Did you understand that some of these loans had an
20 interest rate on the books of ten percent?

21 A. Some of them did, yes.

22 Q. And some of them had an interest rate of zero?

23 A. That is correct.

24 Q. Okay. Do you know from your review of the records of
25 AnswerNet and Cerida if the interest on these loans has been

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1 repaid through the distribution back to Ms. Robertshaw?

2 A. Yes, through the -- through the 2012 audit and review
3 of -- review and compilation of the various entities, we saw
4 the -- we saw the actual repayments of principal and interest
5 to Ms. Robertshaw.

6 Q. For accounting purposes, is the payment of loans over
7 time with interest the same as the payment of a lump sum?

8 MR. FLAMM: Objection, Your Honor. Calls for a
9 conclusion. This witness has not been put up there as an
10 expert. They're posing him as an expert now. He was never
11 listed as an expert.

12 THE COURT: Well, just as a matter of common sense,
13 payment over time doesn't give you immediate use of the money,
14 so --

15 BY MR. MITTS:

16 Q. And what is your understanding, Mr. Mitchell, of the
17 significance of interest?

18 A. The significance of the interest is really -- it really
19 relates to the time value of money.

20 Q. Okay. And it's really the reverse of a present-value
21 calculation, isn't it?

22 A. That is correct, yes.

23 Q. Okay.

24 THE COURT: But the point is, you still don't have
25 the use of the money immediately, do you?

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1 THE WITNESS: No, you do not.

2 THE COURT: Right.

3 BY MR. MITTS:

4 Q. Mr. Mitchell, just by way of a little bit more context.

5 I hurried through your background. In addition to being a
6 certified public accountant, do you hold other professional
7 designations?

8 A. Yes, along with the CPA designation, I have two specialty
9 credentials issued by the AICPA.

10 Q. What is the AICPA?

11 A. The AICPA is the American Institute of Certified Public
12 Accountants.

13 Q. What are those designations?

14 A. And those designations -- one is ABV, which is accredited
15 in business valuation. The other is CFF, which is certified
16 in financial forensics. I also hold a business valuation
17 credential from the National Association of Certified
18 Valuation Analysts, and that's a CVA, standing for certified
19 valuation analyst.

20 MR. MITTS: Thank you.

21 Your Honor, I don't have anything further for Mr. Mitchell at
22 this time.

23 (Pause)

24 MR. PUDLES: I just have three questions.

25 CROSS-EXAMINATION

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1 BY MR. PUDLES:

2 Q. First, could you look at N15 in the Plaintiff's binder?

3 Plaintiff N15. I'm sorry. N15? One of the white -- one of
4 the white binders. N as in Nancy.

5 A. Finally, I'm there.

6 Q. Okay. Thank you.

7 Can you identify that document for the record?

8 A. This is an e-mail from you to myself, Jay Brower, who is
9 my tax partner, and Cindy Ravitch, who was the CFO of
10 AnswerNet at the time, regarding the funding of the special
11 distribution which was really tied to your payment obligation
12 to Linda in 2011.

13 Q. And that e-mail was dated what?

14 A. August 18th 2011.

15 Q. And in that e-mail were you asked to provide counsel and
16 advice?

17 Maybe if I ask you to look at the -- I believe, the bottom
18 section, the last paragraph; if that will refresh your
19 recollection.

20 A. Yes.

21 Q. And -- thank you very much. Let's move on.

22 I want you to pick up that document. What's the document ID,
23 the one with the loans that you were just looking at? If you
24 could.

25 A. Defendant's Exhibit 400.

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1 Q. Defendant's Exhibit 400. Thank you.

2 And on that document -- it reflects interest rates on loans
3 that existed at the time of the distribution; does it not?

4 A. Yes, it does.

5 Q. And are the interest rates listed on those distribution
6 the interest rates that were being paid at that time by the
7 company to Ms. Robertshaw and myself?

8 A. Yes, they are.

9 Q. Okay. And were some of those interest rates zero?

10 A. Yes, they were.

11 Q. And in your experience in reviewing the books and records
12 of AnswerNet, have you ever seen interest rates between --

13 MR. PUDLES: Let me strike that.

14 Q. Are you -- is it normal practice for there to be loans
15 between the various companies -- the various AnswerNet
16 companies owned by Ms. Robertshaw and myself?

17 A. Yes.

18 MR. FLAMM: Objection, Your Honor. Lack of
19 foundation.

20 THE COURT: If he knows, he can answer.

21 THE WITNESS: Yes -- yes, there are loans between the
22 various companies owned by you and Ms. Robertshaw.

23 BY MR. PUDLES:

24 Q. And have those -- has it always been the practice, since
25 there are multiple companies, for there to be loans between

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1 the companies?

2 MR. FLAMM: Same objection, Your Honor.

3 THE WITNESS: Yes, that's been the practice from --

4 THE COURT: He can answer, if he knows.

5 THE WITNESS: From almost day one that's been the
6 practice.

7 BY MR. PUDLES:

8 Q. And to your knowledge, from your experience in providing
9 audits and reviewing the financials of AnswerNet Inc., have
10 those loans between the companies been different interest
11 rates, depending on the cost of money of the company at the
12 time of those loans?

13 A. Most of the -- the loans between the companies generally
14 are -- have been interest free.

15 Q. Okay. And on the books of AnswerNet -- for the year
16 ending 2011, do the books of AnswerNet reflect that AnswerNet
17 Inc. made a distribution to Gary Pudles in the amount 980,000
18 dollars?

19 A. Not on the books of AnswerNet, no.

20 Q. Did the books of AnswerNet reflect loan repayments from
21 AnswerNet to Cerida Investment Corp., Contact America and Gary
22 Pudles?

23 A. I'm not sure if I understand your question. To the
24 extent that there were shareholder loans that Gary Pudles had
25 with AnswerNet, those were repaid in 2011.

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1 Q. And was there -- were there loans between AnswerNet -- at
2 the beginning --

3 During 2011, at the time of the distribution, were there loans
4 from Cerida Investment Corp. to AnswerNet -- or, sums due from
5 Cerida Investment Corp. to AnswerNet?

6 A. There were -- there have historically been intercompany
7 advances between AnswerNet and Cerida.

8 Q. And as part of the transaction, the distribution, were --
9 did AnswerNet pay back some of those loans to Cerida?

10 A. I'm questioning whether there was something defined as a
11 loan versus a normal intercompany balance.

12 Q. So there was -- but there was some kind --

13 A. But there are -- there are always -- there are always
14 payments that are going back and forth between Cerida and
15 AnswerNet and all of the other companies, for a myriad of
16 business reasons.

17 Q. Okay. So it would be normal -- part of the normal course
18 of business for AnswerNet to pay sums due to Cerida and sums
19 due to Contact America, whether they were called loans or not.

20 A. Correct. And vice versa.

21 Q. And as part of this, were sums that were due from Cerida,
22 whether they were called loans or not, and sums that were due
23 from Contact America to AnswerNet repaid as part of the
24 transaction?

25 A. Yes.

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1 Q. And as part of the 980,000 dollars, was a distribution
2 actually made from Cerida and not AnswerNet Inc.?

3 A. The distribution that was made was made from Cerida and
4 not AnswerNet. We would -- part of our advice and tax counsel
5 would be not to take a dividend out of AnswerNet because it
6 would be subject to double taxation.

7 Q. Okay. I have my last question. At the time -- at the
8 time --

9 MR. PUDLES: No, strike that.

10 Q. As of October 15th 2011 did you -- were you doing the tax
11 returns for Startel Corporation?

12 A. Yes.

13 Q. And did Startel Corporation, as of December 31, 2011,
14 have in excess of a million dollars in the bank?

15 A. Startel had a significant amount of cash in the bank at
16 the end of 2011. What the exact amount was, whether it was
17 more than or less than a million, I don't recall.

18 MR. PUDLES: Okay. I have no further questions, Your
19 Honor.

20 MR. RHOADS: I have no questions, Your Honor.

21 THE COURT: Very well.

22 (Pause)

23 CROSS-EXAMINATION

24 BY MR. FLAMM:

25 Q. Mr. Mitchell, are you here today pursuant to subpoena?

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1 A. Yes, I am.

2 Q. Okay. Now, let me see if I understand how an accountant
3 works. And let's talk a minute about the -- Cerida obtaining
4 warrants from Waterside. The three-percent warrants. You
5 know what we're talking about?

6 A. Yes, I do.

7 Q. You didn't negotiate any of the warrants, did you?

8 A. I did not.

9 Q. You didn't create any of the documents that conferred the
10 warrants, did you?

11 A. I did not.

12 Q. You didn't talk to Waterside about the warrants, did you?

13 A. No.

14 Q. In fact, would it be fair to say that you really have no
15 firsthand knowledge about what happened with those warrants,
16 and your knowledge is exclusively what was told you by the
17 company.

18 A. By the company and by the documents that were provided,
19 yes.

20 Q. That the company provided you.

21 A. That the company provided.

22 Q. Okay. Did the company provide you a document that showed
23 warrants in the amount of 6,351 shares, or one and a half
24 percent, of the AnswerNet stock that were issued to Barbara
25 Robertshaw? Did you see those warrants?

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1 A. I don't -- that's not a number that I recollect, so I'm
2 going to say no.

3 Q. Did you see any documents that conferred the Progress
4 warrants on Cerida?

5 A. I may have.

6 Q. Did you actually see Cerida warrants from Progress or Ben
7 Franklin?

8 A. We have Progress and we have Ben Franklin documents in
9 our files. Whether -- the exact content of what's in those
10 documents, I don't recollect.

11 Q. Did you verify that the transactions took place that were
12 reported on the books? Did you independently verify them, to
13 your own personal knowledge?

14 A. At the time that the transactions took place, we would
15 have asked to see copies of checks and other documentation
16 that may have been exchanged to support the transactions.

17 Q. So is it your testimony now that you saw an assignment of
18 the Waterside three-percent warrants to Cerida?

19 A. I just indicated that we got a series of documents that
20 relate to Progress, to Ben Franklin, in our audit files, going
21 back many years. Would I recollect those actual documents
22 were today, I can't tell you, I don't have that degree of
23 recollection.

24 Q. And you don't have any firsthand knowledge of the actual
25 transaction itself on the three-percent warrants, nor do you

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1 have firsthand knowledge of the assignment of the Ben Franklin
2 or Progress warrants; is that right?

3 A. I'm not sure what you mean by "firsthand knowledge." Was
4 I there when the transaction was negotiated? No, I was not.

5 Q. As an accountant, isn't it true that all you're doing is
6 you're taking documents and information that's told to you by
7 the company about what happened and you're recording it in an
8 accounting fashion.

9 THE COURT: I thought he previously answered that
10 question. And he said yes.

11 THE WITNESS: We're testing the recording of it, if
12 it was done by the company, as part of our audit procedures,
13 yes.

14 BY MR. FLAMM:

15 Q. I'd like you to turn -- if you have the Defendant's
16 binders there -- to Defendant's Exhibit 25.

17 MR. FLAMM: While you're doing that --
18 Your Honor, at this time I'd like to move to strike his
19 testimony about the fact of the assignment of any of the
20 warrants, or the acquisition of warrants, because it's not
21 based on any firsthand knowledge. All he testified --

22 THE COURT: He said it's based on the documents that
23 were supplied to him by the company. I understand that.

24 THE WITNESS: I'm there.

25 BY MR. FLAMM:

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1 Q. If you'd look at -- excuse me. Those documents are
2 checks -- or, a copy of a check from Barbara Robertshaw; isn't
3 that right?

4 A. Yeah, Barbara Robertshaw Alenzar (ph.), yes.

5 Q. For 65,520 dollars?

6 A. Correct.

7 Q. Made out to Executel.

8 A. Correct.

9 Q. This is the check that you then recorded as a loan?

10 A. This is one of the two checks that was recorded as a
11 shareholder loan, yes.

12 Q. And you recorded it as a shareholder loan because why?
13 Did you talk to Ms. Robertshaw about why she wrote the check?

14 A. I did not, no.

15 Q. What made you call that a shareholder loan?

16 A. Based on discussions with Mr. Pudles at that time.

17 Q. Did he tell you to classify it as a shareholder loan?

18 A. At the time -- yeah -- yes, because we would not have
19 made that journal entry on our own.

20 Q. And when you say "at the time," at what time? At the
21 time that the check was written or some time later, or don't
22 you know?

23 A. Probably in connection with the year-end work at the end
24 of 2006.

25 Q. So do you know or do you not know?

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1 A. No, what I know is that the actual transaction to record
2 the warrant was a year-end journal entry that we had made as
3 of December 31st 2006, an adjusting entry to Cerida's books,
4 based on information and discussion with Mr. Pudles.

5 Q. And was it Mr. Pudles who told you that Cerida had
6 acquired the warrants?

7 A. Yes, it was.

8 Q. Can you turn to Defendant's Exhibit 23, third page?

9 A. I have it.

10 Q. It's a check from Cerida Investment for 250,000 dollars.
11 Do you see that?

12 A. Yes, I do.

13 Q. Right above the check is the check stub. Can you read
14 what it says there?

15 Q. What the recordation of the check -- what it's for.

16 Oh, I'm sorry, is it -- it's page -- it may not be on the
17 same page on mine. Okay.

18 A. On page 3 of --

19 Q. Page 3, yes.

20 And that check says that the -- the money is for a shareholder
21 distribution?

22 A. That's what it says, yes.

23 Q. But that's not the way you booked it, is it?

24 A. It was booked by Cerida as a shareholder distribution to
25 Executel.

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1 Q. And how was it carried on the books?

2 A. And since Executel was not a shareholder of Cerida, it
3 could not receive a distribution; so we reclassified the
4 shareholder distribution as an investment in AnswerNet
5 warrants on Cerida's books.

6 Q. Okay. So it's a shareholder distribution to Barbara
7 Robertshaw that you recorded as a shareholder distribution to
8 Executel, who's not a shareholder; is that right?

9 A. No, the company had recorded it as a shareholder
10 distribution to Executel.

11 Q. You didn't, the company did that?

12 A. The company did that.

13 Q. So who at the company did that?

14 A. Whoever was making the accounting entries at the time the
15 check was written back in February of 2006.

16 Q. And do you think the person who was making the accounting
17 entries was the person -- would make that determination to
18 change the characterization themselves, or would they be told
19 to do that? Based on your knowledge of AnswerNet.

20 A. I would have no idea.

21 Q. But in any event, the way it was carried on the books is
22 not the way it's recorded on the check when the check was
23 written, correct?

24 A. That is correct.

25 Q. You testified that the deals with Mr. Pudles and

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1 Robertshaw were fifty-fifty deals. Did you see any agreement
2 on that?

3 A. No.

4 Q. So would it be fair to say that your basis is that you've
5 seen them do deals on a fifty-fifty basis and therefore
6 concluded that it was a fifty-fifty deal?

7 A. No, up until 2009 or so there was no shareholders
8 agreement between the parties that I'm aware of. My general
9 recollection in working with both the Robertshaws and with Mr.
10 Pudles was that they did a lot of things on a handshake.

11 Q. My question was, your testimony that they did things as a
12 fifty-fifty deal is based on your observation of some deals
13 that they did, as opposed to seeing any agreement; isn't that
14 right?

15 A. That's correct.

16 Q. And would it surprise you if I told you that any fifty-
17 fifty agreement was based on distributions and not
18 opportunities? Not investment opportunities?

19 A. Well, the distributions that were made by Cerida would
20 have to be fifty-fifty to remain in compliance with the tax
21 code.

22 Q. Okay. I'll withdraw the question.

23 You said that Bill was the proxy for Barbara. When's the
24 first time you met Barbara Robertshaw? In person.

25 A. Probably at an event where the company was being honored

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1 as one of the fastest-growing companies in the region.

2 Q. Probably or for sure?

3 A. No, for -- for sure, at some point going back to the mid
4 2000s. I think I only had met Barbara, you know, once -- once
5 for sure, maybe twice.

6 Q. So when you say Bill was the proxy for Barbara, you
7 really don't have any experience with that, do you? You just
8 know that you've talked to Bill a few times when he may have
9 related something for Barbara, isn't that right?

10 A. No, I talked to Bill many times. And conversations with
11 Bill -- to the extent that they were talking about
12 opportunities, deals, the business, whatever, you know, Bill
13 always made it known to me -- many different occasions -- that
14 he was representing his daughter and was the voice of his
15 daughter in conducting these transactions.

16 Q. Well, you understand the difference between acting for
17 someone on a transaction and being their proxy?

18 A. I use the term "proxy" not in a legal sense.

19 Q. So what you meant to say was that you dealt with some
20 deals with Bill Robertshaw where he spoke on behalf of his
21 daughter. Would that be a fair way of characterizing what you
22 meant to say?

23 A. I think that's fair.

24 Q. You testified that Michelle Ju brought you the
25 information for one of the tax years. I think it was 2006.

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1 Do you know whether Michelle Ju prepared the information that
2 she brought you, or was she just bringing it over?

3 A. No, Michelle was the controller for the Signius company.
4 And due to some issues at AnswerNet, Michelle stepped in to
5 assist AnswerNet and Cerida with the preparation of its books
6 for the year ended December 31st 2006; so for that one year
7 she was, in effect, the point person for the audit and
8 assisted with closing the books that year.

9 Q. And over what period of time was that that you acted with
10 her as the point person?

11 A. Probably January of 2007 through whenever the financial
12 statements were issued, which would have been April or May of
13 2007.

14 Q. Me not being an accountant, this is probably a dumb
15 question, but it seems to me, from a cash standpoint -- well,
16 first of all, what happened with the -- Mr. Pudles' divorce
17 transaction was that the company borrowed a million dollars,
18 right? One of the companies did.

19 A. Company borrowed against its line of credit.

20 Q. So it took a million dollars from a bank that it didn't
21 have.

22 A. Don't know if the exact amount was a million but the
23 company borrowed some money from its line of credit. Whatever
24 the amount was.

25 Q. Whatever the amount. And so, just call it a million to

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1 be -- I'm just trying to get the concept down here.

2 So from a cash standpoint, the company has to pay that money
3 back, plus interest, right?

4 A. Correct.

5 Q. And it also gave that million dollars to Mr. Pudles.

6 A. Correct.

7 Q. So when it eventually pays the money back to the bank,
8 that comes out of profits, doesn't it?

9 A. Comes out of cash flow.

10 Q. Okay. Isn't that somehow a double cash flow if you pay
11 the money back to the bank and you also paid it to Mr. Pudles?
12 Doesn't it have a double impact on your cash flow?

13 A. No, I don't -- I don't see that. Either the company
14 could have paid Mr. Pudles the million dollars or it could
15 have borrowed the million dollars, in which you would have
16 cash in and then cash out to Mr. Pudles, but it's still only
17 one million dollars in your example.

18 Q. Okay. So it's not paying a million dollars to Mr. Pudles
19 and at the same time paying a million dollars back to the bank
20 that it borrowed.

21 A. No, because the bank gave the company a million dollars.

22 Q. It didn't give it, it loaned it, right?

23 A. It loaned it.

24 Q. Loaned the money.

25 A. But I have a million dollars in, I have two million

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1 dollars out, then that is one million dollars out.

2 Q. You said -- you testified that Cerida was acquiring a
3 chunk of warrants each year. Did you actually see the
4 transactions that supported the Cerida acquisition of
5 warrants? Did you see the warrants?

6 A. I didn't see the -- I didn't see the warrants in terms of
7 the actual stock certificates. I saw whatever evidentiary
8 transact -- whatever evidentiary documents there were that
9 supported the payments that Cerida made to acquire the
10 warrants each year.

11 Q. And they were what? Do you recall?

12 A. Some combination of -- some combination of cancelled
13 checks and/or a letter or some type of documentation --

14 Q. You don't --

15 A. -- agreement.

16 Q. You don't remember specifically as you sit here what you
17 saw for any specific acquisition of any specific chunk of
18 warrants?

19 A. Probably, for most of the warrants --

20 Q. Sir, "probably" doesn't help us. I need to know what --

21 A. Well --

22 Q. -- actually --

23 A. -- I'm trying to answer to the best of my recollection.

24 Q. I'd like to know what you know, I'd like you not to
25 guess.

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1 A. Well, then, I won't guess.

2 Q. Okay. Did you prepare for your testimony today?

3 A. Slightly, yes.

4 Q. With whom did you prepare?

5 A. I prepared with myself.

6 Q. Okay. Nobody else. You didn't meet with any counsel?

7 A. No.

8 MR. FLAMM: Okay. Thank you very much. I have no
9 further questions.

10 THE COURT: Anything else?

11 MR. PUDDLES: None for me.

12 MR. MITTS: Nothing else -- oh, excuse me, Your
13 Honor. Nothing for the Defendants.

14 THE COURT: Okay. Anybody else?

15 All right. You may step down, sir.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Thank you. You're free to stay but
18 you're free to leave the courtroom. Thank you for coming in.

19 All right. Your next witness.

20 MR. MITTS: Your Honor, at this point the Defense
21 would like to offer some documents -- requests for admissions,
22 discovery responses by the -- from the Plaintiff.

23 We have no more witnesses that we're going to call.

24 We are going to provide your law clerk and Your Honor with a
25 list of the exhibits. I have a list worked up now but I'd

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1 like to just go over it one more time to make sure it's
2 comprehensive.

3 THE COURT: Yeah, there is no hurry about the exhibit
4 list.

5 MR. MITTS: Okay.

6 THE COURT: Right. Sure.

7 MR. MITTS: All right. So I will just identify the
8 specific discovery responses.

9 THE COURT: Okay. Fine.

10 (Pause)

11 THE COURT: Now, I don't want to limit your -- the
12 way you present your case. Unless you feel it necessary, I
13 would think -- and if you think it necessary, okay, but you
14 could simply identify by number the request or the
15 interrogatory and the response, because we'll have a lot of
16 briefing with -- supporting it all. Now, if there's anything
17 in particular you want to emphasize, of course you're free to
18 draw my attention to it.

19 MR. MITTS: Your Honor, at this time I thought the
20 best shorthand way to do it was just to actually identify the
21 specific discovery requests. And in the briefing, I would
22 direct the Court's attention to the relevant request and
23 response.

24 THE COURT: Fine.

25 MR. MITTS: Okay. Your Honor, the first is --

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1 THE COURT: Why don't you just read off the numbers,
2 you know.

3 MR. MITTS: Okay. The first is Defendant AnswerNet's
4 first request for admissions directed to Plaintiff Barbara
5 Robertshaw. The specific numbers that I'm referencing right,
6 but I'll detail it more in our submission, are Admission 14,
7 15, 22, 24, 25, 34, 35, 36, 38.

8 From AnswerNet's second request for admissions,
9 number 48, number 49, number 50, number 51.

10 With respect to the request for admissions that
11 Codefendant Betty Babjak served on the Plaintiff, Admission 1
12 and Admission 3.

13 That concludes the request for admissions part, Your
14 Honor.

15 The next document that we would offer is the
16 Plaintiff's Rule 26(a)(1) statement of damages. And
17 specifically I there would reference Roman F(iii), computation
18 of each category of claimed damages.

19 The next discovery request and response is Defendant
20 Gary A. Pudles' interrogatories directed to Plaintiff, and the
21 Plaintiff's response to those. And these I will do separately
22 in the briefing.

23 And I have also the Plaintiff's response to those
24 interrogatories.

25 Similarly, I have Defendant Betty Babjak's

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1 interrogatories addressed to Plaintiff. And I have the
2 responses from Plaintiff to that as well.

3 THE COURT: Do you have any -- are you offering them
4 all or just particular ones?

5 MR. MITTS: I'm going to offer them all and, in our
6 briefing, direct the Court's attention to specific responses.

7 THE COURT: Very well.

8 MR. MITTS: And with that, Your Honor, I'd move the
9 admission of those as well as the documents that we identified
10 during the course of Plaintiff's case as well as our case.
11 And as I said, I will provide Your Honor with a detailed list
12 of those documents.

13 THE COURT: Fine.

14 MR. MITTS: And with that, Your Honor, I thank you,
15 and the Defendant AnswerNet rests its case.

16 THE COURT: Fine.

17 MR. RHOADS: Your Honor, on behalf of Defendant Betty
18 Babjak, I'd simply like to join in the submission that Mr.
19 Mitts just made on behalf of all Defendants. And with that,
20 we rest Ms. Babjak's case as well. Thank you.

21 MR. PUDLES: Your Honor, on behalf of myself, I also
22 join in Mr. Mitts' submission. And I ask the Court, do you --
23 I have one exhibit that I need to put in for my counterclaim.
24 And otherwise I will -- and that will be the whole sum total
25 of the counterclaim.

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1 THE COURT: Okay.

2 MR. PUDLES: And that would be Exhibit 397.

3 THE COURT: Very well.

4 MR. PUDLES: And I would certify that I paid all of
5 the bills referenced in Exhibit 397. I continue to accrue
6 legal fees. In addition, I've been -- and I will continue
7 through trial briefing, et cetera. And those are ongoing
8 legal feels as my damages for my -- for the abuse of process
9 claim.

10 THE COURT: All right. Do Plaintiffs wish to
11 question Mr. Pudles on that exhibit?

12 MR. FITZPATRICK: And I do. I don't even -- I
13 haven't even seen it.

14 MR. MITTS: It's number --

15 THE COURT: Pardon me?

16 MR. MITTS: -- 397 in the binder.

17 MR. FITZPATRICK: In the binder?

18 MR. MITTS: Yes.

19 MR. FITZPATRICK: Okay.

20 MR. PUDLES: Should I take the stand then, Your
21 Honor?

22 MR. FITZPATRICK: Judge, could we just take -- can we
23 just take a moment?

24 THE COURT: Sure. Sure.

25 Do you want to sit down till they find --

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1 Would you like a short recess while you're searching
2 for that?

3 Counsel? Would you like a short recess while you're searching
4 for that?

5 MR. FLAMM: Yes, Your Honor, we would.

6 MR. FITZPATRICK: I think that would be great. Thank
7 you.

8 THE COURT: Huh?

9 MR. FITZPATRICK: That would be good.

10 THE COURT: Okay. Great.

11 (Recess from 2:28 p.m. to 2:45 p.m.)

12 THE COURT: Where are we now?

13 MR. FITZPATRICK: We were at the question of Mr.
14 Pudles moving for the admission of D -- what is this?

15 MR. PUDLES: 397.

16 MR. FITZPATRICK: D-397, which are a number of legal
17 bills -- or, bills for legal services from a Burns and Kasmen
18 PC.

19 We're not going to object to the admission of this,
20 but we are going to reserve oral arguments as to the validity
21 of these legal bills for a Defendant who has been representing
22 himself pro se in this case.

23 THE COURT: All right. Well, now, just a minute.
24 These are part of your counterclaim, Mr. Pudles?

25 MR. PUDLES: Yes, Your Honor.

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1 THE COURT: Okay. Now, you don't wish to examine Mr.
2 Pudles about these, you're just going to --

3 MR. FITZPATRICK: My -- with my understanding is the
4 representation from him, before we broke, was that he incurred
5 these bills that are marked with that exhibit number as a
6 result of this case.

7 THE COURT: Yeah, I -- yeah, yeah, right; and you
8 were going to present argument to me at the appropriate time.

9 MR. FITZPATRICK: Yes, sir.

10 THE COURT: Right. Okay.

11 MR. FITZPATRICK: Yes.

12 THE COURT: Fine.

13 All right. Now, just so you understand, Mr. Pudles, I said
14 that I would try the counterclaim separately. And you're
15 telling me this is the evidence you are presenting on your
16 counterclaim, correct?

17 MR. PUDLES: Yes, together with all of the evidence
18 presented --

19 THE COURT: Yeah, well, of course.

20 MR. PUDLES: -- in the primary trial.

21 THE COURT: Well, yeah, of course.

22 MR. PUDLES: Yes, Your Honor.

23 THE COURT: Together with all the evidence that's
24 been presented in the case. So -- so --

25 MR. PUDLES: Yes.

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1 THE COURT: -- you're resting on your counterclaim as
2 well.

3 MR. PUDLES: I am, Your Honor.

4 THE COURT: All right. Fine.

5 So we now are at the point where I assume we're to
6 see if there's any rebuttal by Plaintiff?

7 MR. FITZPATRICK: Yes, Your Honor. But just before
8 that, as a matter of housekeeping --

9 THE COURT: Yes.

10 MR. FITZPATRICK: -- I'd like to make a formal motion
11 to dismiss that counterclaim. We don't need argument on it
12 now. I know you reserved argument on the other motions to
13 dismiss, but I want to put it on the record.

14 THE COURT: Yeah. Of course, of course.

15 MR. FITZPATRICK: Thank you, Your Honor.

16 THE COURT: Now, is there anybody -- at the end of
17 the case I will assume that you will all renew all your
18 motions, just so your record's all clear, okay? So I'm going
19 to take it -- I'm telling you right now, as of now, at the end
20 of the case and all the evidence, you all have renewed all
21 your motions, so your records are all protected. Okay?

22 MR. PUDLES: Thank you, Your Honor.

23 MR. FITZPATRICK: Thank you so much, Your Honor.

24 THE COURT: Right. Okay.

25 MR. FLAMM: Your Honor, we have one very brief

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1 rebuttal witness.

2 THE COURT: Very well.

3 MR. FLAMM: It's William Robertshaw.

4 THE COURT: All right. Now, would Mr. Robertshaw be
5 more comfortable just staying -- is he in a wheelchair?

6 MR. FLAMM: Yes.

7 THE COURT: If he is, he could testify from his
8 wheelchair down there, and we'll put a microphone in front of
9 him.

10 MR. ROBERTSHAW: Your Honor, I can get into the
11 chair.

12 THE COURT: Whatever -- your choice.

13 MR. ROBERTSHAW: Thank you, sir.

14 (Pause)

15 MR. FLAMM: Your Honor, I just wanted to let you know
16 that this trial made me get hearing aids.

17 THE COURT: Pardon me?

18 MR. FLAMM: I just wanted to let you know this trial
19 made me get hearing aids.

20 THE COURT: Oh, well, I hope yours work better than
21 mine do. Mine are supposed to arrive -- new ones are supposed
22 to arrive any minute.

23 MR. FLAMM: I just got them and just tried them, and
24 they're swell.

25 THE COURT: Well, I appreciate all counsel. I have

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1 no problem in the courtroom at all as long as counsel speak
2 into a microphone. And believe me, during this trial, you've
3 all been very good about that. And the witnesses as well. So
4 I really haven't had any problem hearing at all.

5 But, you know, as you mature, which is a word I like to use
6 rather than "getting older," it's very frustrating when
7 somebody says something to you and you have to pretend you
8 understand. And the fellow might be saying to you, "You're
9 the biggest SOB I ever met in my life," and you sit there
10 smiling and say, "Well, thank you."

11 All right. Let's proceed.

12 MR. FLAMM: And your family gets tired of you saying,
13 "What --

14 THE COURT: Yes.

15 MR. FLAMM: -- what?"

16 THE COURT: Oh, yes. You can hear me keeping quiet
17 on that remark.

18 All right. Let's proceed.

19 THE CLERK: Before we begin, would you just please
20 raise your hand?

21 WILLIAM ROBERTSHAW, PLAINTIFF'S WITNESS, SWORN

22 THE CLERK: Thank you very much.

23 DIRECT EXAMINATION

24 BY MR. FLAMM:

25 Q. Could you state your full name for the record, please?

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1 A. William Robertshaw.

2 Q. And Mr. Robertshaw, you've been here through the trial,
3 so you've heard pretty --

4 THE COURT: No, he hasn't been here --

5 MR. FLAMM: Excuse me.

6 THE COURT: -- through all of the trial.

7 BY MR. FLAMM:

8 Q. You've been here for the second half of the trial.

9 A. Most of the trial, yes.

10 Q. Why don't you describe briefly who you are and what you
11 do.

12 A. I'm a manager of multiple message centers, and I'm the
13 president of most of my daughter's investments in message
14 centers.

15 Q. And you've worked closely with Gary Pudles, isn't that
16 right?

17 A. Yes, I have.

18 Q. All right. And your office is in Princeton with -- where
19 he used to be.

20 A. Yes, it is.

21 Q. Since the office moved, by the way, from Princeton to
22 Willow Grove in 2007, do you still work as closely with him?

23 A. No.

24 Q. Now, I want to ask you just a couple of questions.

25 First of all, did you ever make a deal or an agreement with

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1 Mr. Pudles that a three-percent warrant that Barbara
2 Robertshaw had been assigned half of -- the document that's
3 been marked H23; do you know the document I'm talking about?
4 I can show you the document.

5 A. Please do.

6 MR. FLAMM: Pardon me for one moment, Your Honor.

7 (Pause)

8 UNIDENTIFIED MALE: Oh, that was -- that's the
9 release. That's Defendant's Exhibit 64.

10 THE COURT: Oh.

11 UNIDENTIFIED MALE: You were looking at it -- you
12 asked for it this morning.

13 THE COURT: Yeah. What are we referring to now?

14 UNIDENTIFIED MALE: Now we are looking at the stock
15 purchase agreement.

16 MR. FITZPATRICK: H23.

17 THE COURT: Okay.

18 MR. FITZPATRICK: Your Honor, may I just ask -- may I
19 just ask if we could retrieve Mr. Robertshaw's magnifier for
20 him? It's right next door.

21 THE COURT: Of course.

22 MR. FLAMM: Can I go make a copy of that real quick?

23 THE COURT: Sure.

24 MR. FLAMM: I'll make two photocopies.

25 THE COURT: Okay. Just --

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1 THE WITNESS: I can read this okay.

2 THE COURT: -- wait a minute. We're making a copy.

3 THE WITNESS: You want this for a copy?

4 UNIDENTIFIED MALE: No, they're making copies.

5 THE COURT: They're making a copy for my law clerk.

6 (Pause)

7 THE WITNESS: I don't need it.

8 MR. FITZPATRICK: You're okay?

9 THE WITNESS: I'm okay.

10 THE COURT: Why don't you keep the original --

11 MR. FITZPATRICK: Got it.

12 THE COURT: And give me the copy.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Thank you.

15 Okay. We're ready to proceed when you are, Mr.

16 Flamm.

17 (Pause)

18 BY MR. FLAMM:

19 Q. Mr. Robertshaw, I think I can make this even simpler.

20 A. Yes, I am familiar with this.

21 Q. Did you ever enter into any agreement with Mr. Pudles to
22 have any warrants from Waterside assigned to Cerida?

23 A. No, I did not.

24 Q. Did you ever make any agreement with Mr. Pudles that
25 while he would get paid his million dollars -- his million-

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1 dollar divorce distribution in one lump sum that Barbara
2 Robertshaw would receive her million dollars in installment
3 payments, or delayed payments or over time.

4 A. No, I did not.

5 Q. Do you recall seeing any capitalization tables in
6 AnswerNet over the period 2005, '06, '07?

7 A. Yes, I did. I saw several.

8 Q. All right. Do you recall them showing Cerida with
9 ownership of warrants or stock?

10 A. Yes, I did.

11 Q. Okay. Did you say anything about any of them to Mr.
12 Pudles or anyone else?

13 A. I asked questions several times about ownership but not
14 specifically questioning Cerida.

15 Q. Why not?

16 A. I didn't see any reason to inquire about that, because I
17 assumed that my daughter owned a majority of the AnswerNet
18 company through her initial numbers of shares in AnswerNet
19 plus the large interest she bought directly from Waterside --
20 the warrants from Waterside, and converted into ownership
21 rights. So I didn't think I needed to press on it, but I did
22 ask and things kept changing, and I wasn't sure why. That's
23 about it.

24 MR. FLAMM: Okay. I have no further questions.

25 MR. PUDLES: Can we have a minute, Your Honor?

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1 (Pause)

2 MR. MITTS: Your Honor, we have no questions for this
3 witness.

4 THE COURT: Anyone else?

5 MR. RHOADS: I have no questions for this witness,
6 Your Honor.

7 MR. PUDLES: I have no questions for this witness.

8 THE COURT: Very well.

9 All right. Is that -- the Plaintiffs are resting?

10 MR. FLAMM: We are, Your Honor.

11 THE COURT: Defense is resting?

12 MR. MITTS: Yes. Yes, Your Honor. We are resting.

13 THE COURT: And Mr. Pudles, you've already rested on
14 your counterclaim, I believe?

15 MR. PUDLES: Yes, Your Honor. Thank you.

16 THE COURT: All right. And then, I take it all the
17 evidence in this case has been completed?

18 MR. FITZPATRICK: That's correct, Your Honor.

19 THE COURT: Subject to the offering of the exhibits.

20 MR. RHOADS: Yes, Your Honor. And we will get those
21 to you, if we can, by -- is it by the end of the week? Well,
22 I guess today is the end of the week.

23 THE COURT: Sometime next week, if you can.

24 MR. RHOADS: Thank you so much, Your Honor.

25 THE COURT: We'll have to set a schedule and --

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1 you're busy lawyers, so don't put a lot of pressure on
2 yourself. This case obviously is going to take some time to
3 resolve in this court, so --

4 MR. RHOADS: We'll just --

5 THE COURT: I'll be in your hands on a schedule,
6 okay?

7 MR. MITTS: I just want to say, on behalf of
8 everybody, Your Honor, thank you for the time and the
9 flexibility that you gave us, starting those days when you did
10 at one-thirty. That was a big help, and we do really
11 appreciate it.

12 THE COURT: Well, good.

13 Now, if -- yes, if you'd --

14 Thank you, Mr. Robertshaw.

15 If you'd take Mr. Robertshaw back there, and
16 everybody sit down, I have a few words I want to say to all of
17 you.

18 (Pause)

19 THE COURT: First of all, I'd like to compliment the
20 lawyers. You've tried this case expeditiously and
21 professionally. That's a great help to a Judge. It's not
22 always the case in this courtroom, so thank you.

23 The other thing is -- I want to say to the lawyers, I
24 want you to go back with your clients now that all the
25 evidence has come in and take off your advocate's hat. You've

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1 all seen how the evidence has gone in, and evaluate it
2 objectively. And give them some good advice about where you
3 think this case is going to go.

4 And I would say to the clients, you know, I've seen
5 this week on this witness stand some brilliant, able business
6 people, and I can't help but thinking that their time would be
7 better spent devoted to their business than to hours of
8 expensive litigation. A divorce is never pleasant when two
9 people have been close, but what you have ahead of you is a
10 lot of briefing, oral argument, a decision from this Court.
11 It doesn't stop here. It's going to go up to the Court of
12 Appeals no matter what my decision is. These lawyers will
13 tell you, predicting what our Court of Appeals will do in a
14 given case is very risky business indeed. In fact, in my
15 chambers, my law clerks are trained, whenever the words "the
16 Court of Appeals" are used, they must say, "COA within their
17 infinite wisdom."

18 So I would urge you, I really would urge you, however
19 painful it might be to have a divorce, it's -- for business
20 people, their lives are better spent devoted to their business
21 than in litigation. Now, it's my duty to decide this case,
22 and I will do it, if called upon. I've got plenty of cases,
23 so it doesn't matter to me whether I work in this case or
24 others; but I hate to see all this ability and talent wasted
25 when it could be out there building a business.

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1 So if you wish to go back to Judge Restrepo, you
2 should promptly let Mr. Irvin (ph.) know. If for some
3 reason -- I can't think why -- because he's a super whiz at
4 settling cases, he is, as you know, been nominated to come on
5 this court, but if for some reason you prefer not to go back
6 to him, I'll find either another Magistrate-Judge or a Judge
7 of this Court to send you to. I can't do it because I'm the
8 fact-finder.

9 But I would urge you to consider that very carefully.
10 Of course, it's your call, not mine; but I would urge you to
11 make that decision whether you're going to do that promptly,
12 before we incur any more expense and labor. And if you decide
13 no, then I'll expect counsel to agree on a schedule.

14 And then I think they should confer on whether they
15 want to file a request for findings of fact or conclusions of
16 law, or whether they want to waive those and just file briefs.
17 I will, of course, hold oral argument after the briefs are
18 filed and I've read them. If you waive -- I don't know in
19 this case whether findings of fact and conclusions of law
20 would help me or not; I'm not sure about that. If you waive
21 them, I can just say my opinion constitutes my findings of
22 fact and conclusions of law. I often do that, but I don't
23 know in this kind of case whether that's desirable or not, so
24 I invite your thoughts on that.

25 So I hope you'll all -- especially the clients, will

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1 bear in mind what I've said to you. You're good business
2 people. I'm not a businessperson, but I think maybe I've
3 given you some good business advice.

4 All right. Thank you, all. It's been a pleasure to
5 have you in my courtroom. Now I'd like to see the lawyers
6 alone in my courtroom, without client -- in my chambers,
7 without the clients, please.

8 Not about the case. This will be off the record.

9 (Court is adjourned)

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CERTIFICATION

I, Karen Nevins, the court approved transcriber, do
hereby certify the foregoing is a true and correct transcript
from the official electronic sound recording of the
proceedings in the above-entitled matter.



KAREN NEVINS

DATE

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